

director. The director shall make a complete report in writing to the city controller of the time, place and manner of conducting such sale.
(Code 1968, § 46-192)

Sec. 45-212. Same—Disposition of proceeds.

(a) All funds received by the director of the treasury department from the sale of a motor vehicle under this article shall be delivered to the city controller who shall give his receipt therefor.

(b) Out of the proceeds from the sale of a motor vehicle under this article, the city controller shall first apply such proceeds to the towage and storage lien of the city, which sum shall be placed to the credit of the general fund and shall thereafter be disbursed as the city council shall determine and direct. In the event the proceeds of such sale are in excess of the towage and storage lien, then the excess sum shall be deposited by the city controller in a separate fund and, upon demand being made by the true owner of such motor vehicle, the controller shall deliver such excess sum to such owner. If no demand is made by the true owner of such motor vehicle for such excess sum within two years from the date of the sale of such motor vehicle, such sum shall become the property of the city and the controller shall transfer such sum to the general fund to be used as the city council shall determine and direct.
(Code 1968, § 46-193)

Sec. 45-213. Same—Disposition of vehicle not bid upon.

Any motor vehicle which has been offered for sale at public auction under this article, and for which no bid is received, shall be disposed of by the director of the treasury department in such a manner as he deems advisable and all such motor vehicles so disposed of in such manner shall be reported to the city controller in writing, together with amount received therefor and the date and manner of such disposition.
(Code 1968, § 46-194)

Secs. 45-214—45-230. Reserved.

ARTICLE IX. PARADES AND PROCESSIONS*

DIVISION 1. GENERALLY†

Sec. 45-231. Definitions.

The following words, terms, and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

AAA means the American Arbitration Association.

Arbitrator means a person certified by the AAA to arbitrate disputes under its rules and procedures.

Commercial parade means any revenue generating parade or parade for which a participation fee is charged.

Conditional permit means a permit subject to or dependent upon the satisfaction of conditions that if not satisfied within the time allotted shall result in the automatic revocation of such permit.

Director means the director of the public works and engineering department or his designee unless specified.

Disbanding area means the area where parade participants, floats, vehicles, and animals disband following a parade.

Downtown area means the area including and bounded by Commerce Street on the north, Gray Avenue on the south, Chartres Street on the east, and Bagby Street on the west.

Final permit means a permit issued upon the satisfaction of all requirements of this division.

***Cross references**—Carrying clubs in certain demonstrations, picket lines, etc., § 28-33; use of radios, etc., for advertising, § 30-4; public gatherings in parks, § 32-61 et seq.; street dances, § 40-27.

†**Editor's note**—Ord. No. 05-1347, § 2, adopted December 7, 2005, amended Ch. 45, Art. IX, Div. 1, in its entirety. Formerly, said division pertained to similar subject matter and derived from Ord. No. 99-1352, § 1, adopted Dec. 21, 1999. It should be noted that § 4 of said ordinances provides for an effective date of Jan. 1, 2006, 12:01 a.m.

Holiday means any day officially recognized simultaneously by the city, Harris County, and the Houston Independent School District as a holiday for their employees observed by the general closure of their respective offices.

Non-commercial parade means any non-revenue generating parade or parade for which no participation fee is charged.

Parade means a procession of pedestrians, vehicles, animals or any combination thereof along or upon a street, road, or highway, but shall not mean a funeral procession, a government sanctioned motorcade, or a procession of pedestrians along or upon public sidewalks or private property and shall not mean a procession of vehicles operated in compliance with ordinary traffic laws.

Special event holiday means any holiday proclaimed by the mayor as a special community celebration.

Staging area means the area where parade participants, floats, vehicles, and animals assemble prior to a parade.

(Ord. No. 05-1347, § 2, 12-7-05)

Sec. 45-232. Permit required; traffic control.

(a) It shall be unlawful for any number of persons, delegations, or associations of persons, or for any company, circus, or group to conduct a parade along or upon the streets of the city without first obtaining a permit to do so.

(b) It shall be unlawful for any number of persons, delegations, or associations of persons, or for any company, circus, or group to conduct a parade upon any esplanade, median, median strip, or traffic island designed for the purpose of separating or directing vehicular traffic. No permit shall be required for the use of the sidewalks of the city for any procession or parade.

(c) Upon receipt of a permit, any number of persons, delegations, or associations of persons or any company, circus, or group may conduct a parade along or upon the streets of the city subject to the provisions of this division and other applicable laws.

(d) Traffic control services along a parade route, including the hiring and payment of personnel to deploy traffic control devices and to direct and control traffic, will be provided as follows:

- (1) By the city at no cost to the holder of a permit for a non-commercial parade, up to a maximum of 25 street intersections.
- (2) For a commercial parade, at the discretion of the director, either:
 - a. By the city at no cost to the permit holder for the first 15 street intersections; or
 - b. Entirely by the permit holder.
- (3) The holder of a commercial parade permit shall reimburse the city for traffic control services performed in excess of the limit set forth in sub-item a of item (2) of this subsection at a fee of \$1,000.00 per street intersection.

(e) In no event shall the city provide traffic control services for more than two parades on the same calendar day.

(f) Traffic control or direction along a parade route shall be performed only by law enforcement officers certified under the laws of this state. The use of non-city personnel to deploy traffic control devices or perform traffic control or direction shall be subject to the approval of the director.
(Ord. No. 05-1347, § 2, 12-7-05)

Sec. 45-233. Parade route restrictions in downtown area.

(a) For purposes of this division, "*intersection*" means the junction of any two streets within the parade route, but shall not include any staging or disbanding area.

(b) Applicants for permits for parades to be held in the downtown area may design their own parade routes, subject to the approval of the director, with the following restrictions:

- (1) A parade held on a Saturday, Sunday, holiday, or special event holiday may include no more than 25 street intersections and must be completed in no more than three hours.

- (2) A parade held on a day other than a Saturday, Sunday, holiday, or special event holiday may include no more than ten street intersections, must be completed in no more than one hour, and must begin at either 10:00 a.m. or 2:00 p.m.
 - (3) The parade must be conducted in such a manner that to the extent that the route includes any entrances to or exits from off-street vehicle parking, loading, or customer service facilities, whether public or private, the width of the parade procession shall be controlled at those facilities so that at least one lane of the street may safely be left open for vehicular access to each vehicle facility from the nearest cross street.
 - (4) A parade route may not include any streets or portions of streets that are located west of Bagby Street, south of Jefferson Street, east of Chartres Street, or north of Congress Street.
 - (5) A parade route must in its entirety be located either:
 - a. On Fannin Street or other streets or portions of streets located to the east of Fannin Street; or
 - b. On Travis Street or other streets or portions of streets located to the west of Travis Street.
- (Ord. No. 05-1347, § 2, 12-7-05)
- Sec. 45-234. Parades outside of downtown area.**
- (a) Permits for parades outside of the downtown area shall be issued in conformance with all the provisions of this division. No permit shall be issued for a parade that includes streets located both inside and outside the downtown area.
- (b) Applicants for parade permits for parades to be held outside the downtown area may design their own parade routes with the following restrictions:
- (1) The route may not exceed one and one-half miles in length and may not include more than fourteen intersections, whichever is less; provided, however, that a parade held on a Saturday between the hours of 8:00 p.m. and 11:00 p.m. or on a Sunday between the hours of 1:00 p.m. and 11:00 p.m. may be greater than one and one-half miles or include more than 14 intersections.
 - (2) The maximum time necessary for completion of the parade may not exceed three hours.
 - (3) If the parade is to be held on a day other than a Saturday, Sunday, holiday, or special event holiday, it shall not be held between the hours of 7:00 a.m. and 9:00 a.m., or between the hours of 11:00 a.m. and 1:00 p.m., or between the hours of 3:30 p.m. and 7:00 p.m.
 - (4) If more than one parade is to be held on the same calendar day and time, the parade routes and staging and disbanding areas of each parade may not be within 5 miles of one another.
 - (5) No parade route shall contain any portion of the following streets, roads, or highways:
 - a. Interstate 610 Loop, including its service roads.
 - b. U.S. Highway 59, including its service roads.
 - c. Interstate Highway 45, including its service roads.
 - d. U.S. Highway 290, including its service roads.
 - e. Interstate Highway 10, including its service roads.
 - f. State Highway 288, including its service roads.
 - g. Controlled access portions of U.S. Highways 90 and 90-A, including their service roads.
 - h. The Hardy Toll road, including its service roads.
 - i. Beltway 8, including those portions known as the Sam Houston Toll Road, and its service roads.

- j. State Highway 225, including its service roads.
- k. Controlled access portions of State Highway 249, including its service roads.
- l. State Highway Spur 5, including its service roads.
- m. Westpark Toll Road.

This provision shall not be construed to prohibit a parade route from crossing one of the listed streets, roads, or highways while traveling along or upon a non-listed street, road, or highway.

(Ord. No. 05-1347, § 2, 12-7-05)

Sec. 45-235. Permit application generally; issuance, etc.

(a) An application for a parade permit shall be submitted on a form supplied by the director, signed by the applicant or, if the applicant is other than an individual, a person authorized for that purpose by the applicant, sworn to before an officer authorized to administer oaths, and filed with the director.

(b) The director shall review each application to ensure that the time, place, and manner of the proposed parade comply with the provisions of this division and shall:

- (1) Not later than the tenth business day after receipt of the application, notify the applicant of the denial of the application if it is found to conflict with another parade already permitted for the same date, or to be incomplete or to violate any provision of this Code, which notice shall set forth the reasons for the denial; or
- (2) On the tenth business day after receipt of the application:
 - a. If more than one application has been received for a parade on the same date, notify the applicant of such fact and follow the procedures for a final determination set forth in subsections (i) and (j) of this section; or

b. If only one application has been received:

- (i) Issue a final permit as provided in section 45-243 of this Code if the applicant has satisfied all requirements of this division for the proposed parade; or
- (ii) Issue a conditional permit, if additional requirements are to be satisfied in the future but within the time allotted by this division.

(c) The issuance of a conditional permit shall not authorize a parade applicant to conduct a parade at the requested time, place, or date and shall serve only to reserve the time, place, and date of the proposed parade route pending the applicant's timely satisfaction of all other requirements of this division applicable to the parade requested, including but not limited to the provision of required insurance, the payment of traffic control costs, or any other requirement.

(d) Each application for a parade permit must be accompanied by a non-refundable fee of \$250.00. All tendered fees must be in the form of a cashier's check or money order payable to the city.

(e) Applications for parade permits shall be delivered to the office of the director and may be delivered between the hours of 9:00 a.m. and 4:00 p.m. except on Saturdays, Sundays, and days observed as holidays for employees of the city.

(f) Applications for parade permits may be filed no earlier than the 365th day prior to the date of the requested parade, provided that if the 365th day falls on a Saturday, Sunday, or day observed as a holiday for employees of the city, then the application may be filed no earlier than the next day that is not a Saturday, Sunday, or day observed as a holiday for employees of the city. Prematurely filed applications, or applications that do not meet all requirements of this section, shall be of no force and effect and shall be returned to the applicant.

(g) The numbers of parade permits that may be issued shall be subject to the following limitations:

- (1) Only one permit shall be issued for a parade to be conducted in the downtown area on the same day;

- (2) Only four permits may be issued for parades to be conducted on the same calendar day in the city limits; and
- (3) Permits may not be issued for conflicting times. For purposes of this provision, parades are considered to be conflicting if their starting times are less than four hours apart.

(h) No person shall be issued more than one of the two permits available for any calendar day. In the event that any person, including an association, club, society, firm, partnership, corporate body, or individual or group of individuals representing or acting on behalf of the same person causes more than one application to be filed for parades to be conducted on the same calendar day, then the application first received shall be considered to be duly filed and any others shall be returned to the applicant. Except as provided in subsection (i) below, parade permits shall be issued in the order in which completed applications that comply with all applicable requirements of this division are received in the director's office.

(i) If within the first ten days allowed for the review of applications for a parade permit two or more organizations apply to hold a parade in the same location on the same day, the director shall immediately review each application and determine whether each fully complies with all requirements of this section and shall:

- (1) Return to the applicant as denied any application which falls under the provisions of item (1) of subsection (b) of this section and approve the remaining application;
- (2) If more than one application is determined to fully comply with this section, give written notice to all applicants whose applications meet the requirements of this section that:
 - a. Competing applications for a parade permit have been received;
 - b. The final determination as to the granting of a parade permit shall be made by an arbitrator;

- c. The parties shall have five business days, excluding the date of the director's written notice, to mutually agree upon an arbitrator; and
- d. If the director has not received written confirmation of the parties agreement on the arbitrator by the sixth business day after the director's notice under this item, the director will appoint the arbitrator; or

- (3) If only one application is determined to fully comply with this section, issue a permit as appropriate under sub-item b of Item (2) of subsection (b) of this section.

(j) The arbitrator shall hold a hearing on all applications referred pursuant to the preceding subsection within 15 business days after receipt thereof and shall provide written notice of the date, time and location of such hearing at least five business days in advance thereof to the applicants and all other persons identified by the director. No hearing shall continue past one day. All fees charged by the arbitrator shall be shared equally by the applicants and shall be paid directly to the arbitrator or the AAA, as its rules may require. Within five business days of the conclusion of the hearing, the arbitrator will render a final decision and award the parade permit to one of the applicants, giving written notice of his decision to the director.

The determination to grant a parade permit involving competing applications for a parade to be conducted on the same date shall be based upon an evaluation of each proposed parade utilizing the following criteria:

- (1) The extent to which the promoter's proposed parade:
 - a. Represents a traditional, historical or cultural event of importance to the city as a whole or to an identifiable segment of the community;
 - b. Has been conducted on the same date or in connection with a holiday or recurring event in the city over a period of years; and/or
 - c. Has enjoyed popular support as evidenced by its attendance by the cit-

izens of the city or an identifiable segment of the community with which it has been traditionally or historically associated.

- (2) The experience of the parade promoter in conducting parades of a similar size or nature, including, but not limited to, consideration of the promoter's record in complying with applicable rules and laws, including local codes.
 - (3) The extent to which the parade promoter's plans for the proposed parade address:
 - a. Traffic and/or mobility issues or impacts both (i) along the proposed parade route and (ii) in the immediate area of the parade.
 - b. The burden on city resources, including but not limited to, police, fire, EMS, solid waste or other city services that might be affected;
 - c. Publicity or other programs designed to involve the community in supporting and/or participating in the proposed parade; and/or
 - d. Other benefits that to the community that may be realized from the parade.
- (Ord. No. 05-1347, § 2, 12-7-05)
- Sec. 45-236. Application information.**
- The application for a parade permit shall contain the following information:
- (1) The name, address, and telephone number of the applicant, as well as the name, address, and telephone number of the individual who will be on-site and in charge of conducting the parade for the applicant and will be responsible to city officials for ensuring that the parade is conducted in compliance with this division and other applicable laws.
 - (2) The date requested for the parade and the time of day requested.
 - (3) The estimated duration of the parade and proposed route thereof.
 - (4) The estimated number of animals that will be used in the parade.
 - (5) The estimated number of individual persons who will participate in the parade.
 - (6) The estimated number, if any, of animals and riders, animal-drawn vehicles, floats, motor vehicles, motorized displays, and marching units or organizations, such as bands, color guards, and drill teams that will participate in the parade.
 - (7) A statement that the individual submitting the application is fully authorized to act and contract for the applicant, together with documents satisfactory to the director showing the authority of such individual.
 - (8) A provision whereby the applicant contracts and agrees that they will indemnify and hold the city harmless against liability for any and all claims for damage to property or injury to or death of persons arising out of or resulting from the conduct of the parade.
 - (9) If required by section 45-242 of this Code, either proof of the required insurance or a declaration that proof of insurance will be provided within the time set forth in that section.
 - (10) A provision whereby the applicant and any other persons, associations, organizations, firms, or corporations on whose behalf the application is made agree to comply with any special or unusual requirements that may be imposed or created by virtue of the proposed nature or size of the parade.
 - (11) A declaration as to the commercial or non-commercial status of the parade.
 - (12) A declaration that the individual conducting a parade prefers to either:
 - a. Provide all necessary traffic control services with non-city personnel; or
 - b. Reimburse the city for the provision of traffic control services as provided in section 45-232 of this Code.

Such declaration by the parade organizer shall be final.

- (13) A statement that the applicant agrees to provide any other information required by the director.
(Ord. No. 05-1347, § 2, 12-7-05)

Sec. 45-237. When application for parade permit is deemed complete.

An application for a parade permit is deemed completed when the applicant has provided all of the information required in section 45-236 including proof of insurance and any additional information required by the director pursuant to items (9) and (13) of section 45-236 and paid any fees or reimbursements due to the city pursuant to this or any previous permit from the city.
(Ord. No. 05-1347, § 2, 12-7-05)

Sec. 45-238. Reasons for denial of a parade permit.

(a) The director may deny a parade permit if the applicant has failed to meet all of the requirements for submitting an application for a parade permit.

(b) Notwithstanding the provisions of subsection (a), the director may deny a parade permit if, after reviewing the applicants' application:

- (1) The applicant demonstrates an inability or unwillingness to conduct a parade pursuant to the terms and conditions of this division;
- (2) The applicant demonstrates an inability or unwillingness to conduct a parade pursuant to the terms and conditions set forth in the parade permit application;
- (3) The applicant has failed to conduct a previously authorized or exempted parade in accordance with law or the terms of a previously issued parade permit, or both;
- (4) The parade will significantly affect the ability of the city to render necessary services to its residents, based upon its equipment and personnel resources and other ongoing functions and responsibilities of its affected departments, including the police, fire, and public works and engineering departments;

(5) The parade will unreasonably interfere with public mobility or otherwise substantially inconvenience the public; or

(6) The parade will create the imminent possibility of violent disorderly conduct likely to endanger public health or safety or to result in significant property damage.

(Ord. No. 05-1347, § 2, 12-7-05)

Sec. 45-239. Procedure upon permit denial.

Except for a permit granted under the provisions of subsections (i) and (j) of section 45-235 of this Code, the director shall notify the applicant of any permit denial, and the reasons therefore, by placing such notice in the United States mail, certified, return receipt requested within ten working days of the date of the receipt of the application.

Such letter shall be addressed to the applicant at the address stated on the application. Any failure to give such notice of denial within the time limits prescribed in this section, shall be deemed a granting of the permit as requested.

(Ord. No. 05-1347, § 2, 12-7-05)

Sec. 45-240. Revocation of permit.

(a) A permit may be revoked if the director determines that:

- (1) A violation of any condition of the permit exists, including failure to obtain approval for any security or other plans required under this Code or to implement any such plans;
- (2) The event poses an immediate threat to health or safety;
- (3) The event organizer or any person associated with the event has failed to obtain any other permit required pursuant to this Code or other applicable law;
- (4) The permit was issued in error or contrary to law;
- (5) If parade changes from a non-insurance to one that requires insurance or a non-commercial to a commercial parade; or

- (6) The applicant demonstrates an inability or unwillingness to conduct a parade pursuant to the terms and conditions set forth in the parade permit application.

(b) Except as provided in subsection (c) of this section, notice of revocation shall be in writing and set forth specifically the reasons for the revocation.

(c) Any threat to health or safety requiring immediate revocation of a permit shall authorize the director or any other person authorized by the city to notify the event organizer verbally of such revocation.

(d) The appeal of a revocation shall be handled in the same manner and under the same time requirements as denials of permits.

(Ord. No. 05-1347, § 2, 12-7-05)

Sec. 45-241. Appeal from permit denial.

(a) The decision of the director is final unless appealed under this section. Except for a permit granted under the provisions of subsections (i) and (j) of section 45-235 of this Code an applicant may appeal the denial or revocation of a permit by filing a written request for a hearing with the director within ten working days of the date of such denial. A hearing shall be conducted within ten working days of the receipt of such request by a hearing committee, consisting of the director of the mayor's office of special events or his designee, the chief of police or his designee and the fire chief or his designee. The city attorney or his designee shall be present, in a non-voting capacity, to advise on any legal issue. It shall be the duty of the director to defend the decision during the hearing. Evidence on the matter shall be received in accordance with Rule 12 of section 2-2 of this Code. The hearing committee shall render a written decision on the matter within five working days of the date of the hearing and immediately provide a copy of such decision to the applicant.

(b) Upon receipt of the hearing committee's decision, the applicant may appeal such decision by giving written notice to the city secretary within five working days of the date of such decision. The city secretary and city agenda direc-

tor shall arrange a date for the matter to be reviewed by the city council, at the next regularly-scheduled council meeting at which it is possible to give lawful prior notice of the matter after the receipt of the hearing committee's decision and the record required by Rule 12 of section 2-2 of this Code. The city secretary shall give written notice thereof to the applicant. The city council shall consider the appeal under the provisions of Rule 12. At the conclusion of the city council's review of the matter, the city council shall render a decision to grant or deny the requested permit, and such decision shall be final and exhaust the applicant's administrative remedies. If the foregoing time requirements appear inadequate to resolve the appeal prior to the date scheduled for the event, the burden shall be upon the applicant to expedite any filings required and to request a special city council meeting, which shall be granted if reasonable under the circumstance.

(Ord. No. 05-1347, § 2, 12-7-05)

Sec. 45-242. Insurance.

(a) No final parade permit shall be issued by the director for a parade to include any number of animals or motorized vehicles unless the applicants shall have delivered to the director proof that the insurance required by this section has been obtained by the applicant. Proof of insurance required for a parade to include any number of animals or motorized vehicles shall be delivered to the director not less than 30 days before the proposed parade date.

(b) Any applicant for a parade permit who fails to provide the requisite proof of insurance not less than 30 days before the proposed parade date shall not be granted a final parade permit. Any conditional parade permit which may have been previously issued shall be revoked by operation of law.

(c) The proof of insurance required by this section for a parade to include any number of animals, floats or motorized vehicles not subject to state safety responsibility laws shall consist of a current policy of commercial general liability insurance for certain designated premises, including the parade route, staging area, and disbanding area. The policy shall bear an endorsement for

the contractually assumed liability as set forth in item (8) of section 45-236 of this Code. These required policies shall be issued by companies rated A-VI or better by AM Best.

The insurance shall contain policy limits of not less than the following:

- (1) Commercial general liability insurance with a minimum limit of:
 - a. *For property damage*, \$1,000,000.00 for each occurrence; and
 - b. *For bodily injury or death*, \$1,000,000.00 for each occurrence.
- (2) Automobile liability insurance, covering all hired and non-owned vehicles with a minimum limit of bodily injury and property damage of \$1,000,000.00 combined single limit.

(d) The proof of insurance required by this section for a parade to include motorized vehicles subject to state safety responsibility laws may be in the form provided in subsection (c) or alternatively consist of proof of compliance with state safety responsibility laws for each vehicle.
(Ord. No. 05-1347, § 2, 12-7-05)

Sec. 45-243. Final permit.

A final permit shall be issued only when the applicant has provided all information, including proof of insurance and any additional information, required pursuant to section 45-236 of this Code.
(Ord. No. 05-1347, § 2, 12-7-05)

Sec. 45-244. Parades exempt from permits.

(a) Notwithstanding the provisions of this division, no permit shall be required for a parade that meets all of the following restrictions:

- (1) The parade shall not contain more than 250 individuals and up to 12 vehicles or animals.
- (2) The parade shall not contain any number of animals or vehicles that are not licensed to travel on public streets.
- (3) The parade route shall not exceed one mile in length, shall contain no portion of

a major thoroughfare or major collector street and may contain no streets located within the downtown area.

- (4) The parade shall comply with the time restrictions contained in subsection (b)(3) of section 45-234 of this Code, and shall take no longer than one hour to complete.
- (5) The parade sponsors shall provide necessary traffic control.

(b) The individual or group of individuals who intend to conduct a parade under this section shall give written notice of the time, day, and place of the parade to the director, the chief of police, and the fire chief by hand delivering the notice at least 72 hours before the parade or by mailing the notice by certified mail, when the certified mail is received at least 120 hours before the parade.

(c) The city shall not be responsible for providing police officers or other city employees to perform traffic control functions during a parade held under authority of this section.
(Ord. No. 05-1347, § 2, 12-7-05)

Sec. 45-245. Staging and disbanding areas; other uses of public streets and sidewalks.

Consistent with traffic mobility and access considerations, the director, or his designee, in consultation with the chief of police, or his designee, may allow public streets to be used by parade permit holders as staging and disbanding areas for parades. The use of public streets and sidewalks for purposes other than staging or disbanding are subject to the regulations set forth in section 40-27 and sections 40-361 through 40-378 of this Code. The closure of freeway ramps associated with a parade requires the submission to the director of a signed and sealed traffic control plan and proof of compliance with all insurance requirements at least 90 days prior to the scheduled parade date.
(Ord. No. 05-1347, § 2, 12-7-05)

Sec. 45-246. Regulations.

Consistent with the provisions of this division and other applicable laws, the director may issue

regulations governing the issuance of parade permits and the conduct of parades. The regulations shall be subject to the approval of the city attorney. A copy of any regulations so promulgated shall be made available upon request in the director's office for inspection and for purchase at the copy fee provided by law.

(Ord. No. 05-1347, § 2, 12-7-05)

Secs. 45-247—45-250. Reserved.

DIVISION 2. FUNERAL PROCESSIONS

Sec. 45-251. Identification of vehicles.

A funeral composed of a procession of vehicles shall be identified as such by the display, upon the outside of each vehicle, of a pennant or other identifying insignia or by such other method as may be determined and designated by the police department.

(Code 1968, § 46-214)

Sec. 45-252. Use of streets during certain hours.

It shall be unlawful for a funeral procession to travel on the streets of the city, including freeways and expressways, between the hours of 7:00 a.m. and 9:00 a.m. and between the hours of 4:00 p.m. and 6:00 p.m., Monday through Friday, inclusive. Funeral processions may use the streets at any hour on a legal holiday.

(Code 1968, § 46-215)

Sec. 45-253. Police escort.

Each funeral procession shall be accompanied by a police motorcycle escort which shall be a part of the funeral procession and the police officer's motorcycle shall constitute an emergency vehicle when the siren and red lights are in operation. There shall be not less than one police motorcycle escort when the vehicles in the funeral procession, including the mortuary vehicles, do not exceed ten and there shall be not less than two police motorcycle escorts when such vehicles exceed ten.

(Code 1968, § 46-216)

Sec. 45-254. Drivers to use right-hand edge of roadway and follow vehicle ahead as close as practical.

Each driver in a funeral or other procession shall drive as near to the right-hand edge of the roadway as practical and shall follow the vehicle ahead as close as is practical and safe.

(Code 1968, § 46-217)

Sec. 45-255. Speed.

The drivers of motor vehicles participating in a funeral procession shall obey the applicable speed limit; provided, however, if, in the opinion of the police escort, conditions require that the funeral procession proceed at a speed less than the minimum speed limit or if conditions require that the procession be brought to a complete stop, such direction shall be obeyed by the participants in the funeral procession.

(Code 1968, § 46-218)

Sec. 45-256. Obedience to traffic signals.

It shall be unlawful for the driver of a vehicle being the leader of a funeral procession to enter into an intersection in violation of a traffic signal, stop sign or direction of a police officer; however, as soon as the procession has started through an intersection, the whole procession may continue through without stopping or observing the direction of such stop sign or traffic signal, provided such vehicles are conspicuously designated as required by this division.

(Code 1968, § 46-219)

Sec. 45-257. Right-of-way rules as between two or more processions.

The right-of-way rules provided by law shall be applicable as between two or more funeral processions, subject to the authority of the police motorcycle escort to direct, control and regulate such funeral processions.

(Code 1968, § 46-220)

Sec. 45-258. Driving between vehicles in procession.

No driver of a vehicle shall drive between the vehicles comprising a funeral or other authorized

procession while they are in motion and when such vehicles are conspicuously designated as required in this division.

(Code 1968, § 46-221)

Secs. 45-259—45-270. Reserved.

ARTICLE X. VEHICLE WEIGHT LIMITS

Sec. 45-271. Generally.

(a) Except as otherwise provided by law, no commercial motor vehicle, truck-trailer, trailer or semitrailer, nor combination of such vehicles, shall be operated over, on, or upon the public streets and highways within the corporate limits of the city, having a weight in excess of one or more of the following limitations:

- (1) No such vehicle nor combination of vehicles shall have a greater weight than 20,000 pounds carried on any one axle, including all enforcement tolerances; or within a tandem axle weight in excess of 34,000 pounds, including all enforcement tolerances; or with an overall gross weight on a group of two or more consecutive axles produced by application of the following formula:

$$W = 500 \frac{LN}{N-1} + 12N \div 36$$

Where:

- | | |
|-----|---|
| W = | Overall gross weight on any group of 2 or more consecutive axles to the nearest 500 pounds; |
| L = | Distance in feet between the extreme of any group of 2 or more axles; and |
| N = | The number of axles in the group under consideration. |

Notwithstanding the above, two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each providing the overall distance between the first and last axles of such consecutive sets of

tandem axles is 36 feet or more; provided, that such overall gross weight may not exceed 80,000 pounds, including all enforcement tolerances.

- (2) No such vehicles nor combination of vehicles shall have a greater weight than 600 pounds per inch width of tire upon any wheel concentrated upon the surface of the highway and using high-pressure tires, and a greater weight than 650 pounds per inch width of tire upon any wheel concentrated upon the surface of the highway and using low-pressure tires, and no wheel shall carry a load in excess of 8,000 pounds on high-pressure tires and 10,000 pounds on low-pressure tires, nor any axle a load in excess of 16,000 pounds on high pressure tires, and 20,000 pounds on low-pressure tires.
- (3) Nothing in this section shall be construed as permitting size or weight limits on the national system of interstate and defense highways within the corporate limits of the city in excess of those permitted under 23 U.S.C. section 127. If the federal government prescribes or adopts vehicle size or weight limits greater than those prescribed by 23 U.S.C. section 127 for the national system of interstate and defense highways, the increased limits shall become effective on the national system of interstate and defense highways within the corporate limits of the city.
- (4) Nothing in this section shall be construed to deny the operation of any vehicle or combination of vehicles that could be lawfully operated upon the highways and roads within the corporate limits of the city on December 16, 1974.
- (5) In this section, an axle load is defined as the total load transmitted to the road by all wheels whose centers may be included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle. Tandem axle group is defined as two or more axles

spaced 40 inches or more apart from center to center having at least one common point of weight suspension.

(b) Any police officer having reason to believe that the gross weight or axle load of a loaded motor vehicle is unlawful, is authorized to weigh the same by means of portable or stationary scales approved by the police department of the city for such use, or the police officer may cause the loaded motor vehicle to be weighed by any public weigher and may require such vehicle to be driven to the nearest available scales for the purpose of weighing.

If the gross weight of a motor vehicle or an axle load exceeds the maximum permitted by law plus a tolerance allowance of five percent of the gross weight authorized by law, such police officer may require the operator to unload or rearrange the load to conform to law without proceeding if the police officer determines that such work may be safely accomplished at the site where the vehicle was weighed or may require the operator to proceed to a location where the cargo can be unloaded or rearranged safely without causing disruption to traffic. Such location shall be the nearest such place on authorized city property, on property under the control of the driver or his principal, or on property where consent has been given for such loading and where it is feasible to unload or rearrange such cargo.

If the load of a motor vehicle consists of livestock, the operator shall be permitted to proceed to destination without unloading providing the destination is within the state.

(c) Any person desiring to operate a vehicle on city streets in excess of the load limit set out herein shall first obtain a special permit from the director of public works and engineering and such permit shall not be issued unless reasonably necessary.

(d) The limitation as to weight prescribed by this section shall not apply to road rollers or other road making or road repairing machinery being moved or used on a street by the United States, the state, the city, or any contractor moving or using such road machinery in the performance of or preparatory to the performance of a contract

with any one of the United States, the state or the city, but in the event of any such road making or road repairing machinery of a weight in excess of the limit set out herein being moved over the streets or bridges in the city, the person in charge thereof shall first obtain from the city engineer a permit for such movement, which permit shall designate the route or streets and also the bridges over which such movement shall take place, and such machinery may then be moved, but not elsewhere than over such designated routes.

(e) Any person moving or causing to be moved a load which, together with the weight of the vehicle, exceeds the limit as set out herein, shall be liable to the city for any damage done by any such excessively loaded vehicle to the streets, bridges or culverts in the city and the acceptance of either of the permits provided for in this section shall be conclusive evidence that the person to whom such permit is issued agrees to make good and pay all such damages upon demand thereof made by the city.

(f) The driver, owner, operator, or other person operating or driving any commercial motor vehicle, truck, tractor, trailer or semitrailer or combination of such vehicles, over, on, or upon city streets or public highways within the limits of the city, shall comply with the provisions of article 6701d-11, section 5(a), of the Revised Civil Statutes of Texas.

(g) The driver, owner, operator, or other person operating or driving any commercial motor vehicle, truck, tractor, trailer or semitrailer or combination of such vehicles, over, on, or upon city streets or public highways within the limits of the city, who fails to comply with the provisions of this section, shall be guilty of a misdemeanor which shall be punishable, upon conviction, by a fine of not less than \$100.00 and not more than \$200.00.

(h) All persons have the affirmative duty to comply with all provisions of this article, and it shall not be a defense to prosecution of such persons that they were acting without a culpable mental state.

(Code 1968, § 46-251; Ord. No. 73-405, § 1, 2-28-73; Ord. No. 75-1220, § 1, 7-15-75; Ord. No. 76-284, § 1, 2-24-76; Ord. No. 78-1702, § 1, 8-29-

78; Ord. No. 85-2065, § 1, 11-27-85; Ord. No. 86-3, § 1, 1-7-86; Ord. No. 93-514, § 106, 5-5-93; Ord. No. 02-449, § 2, 5-29-02)

Cross reference—General penalty for Code violations, § 1-6.

Sec. 45-272. Weight limits on specific streets.

(a) When signs are erected giving notice thereof, no person shall operate any vehicle with a gross weight in excess of the amounts specified on such signs at any time upon any of the streets or parts of streets so signed. Under this section, as vehicle weight is indicated by the number of axles supporting such vehicles, signs limiting the number of axles on through vehicles shall be official.

(b) When signs are erected stating "No Through Trucks," no person shall operate any commercial vehicle exceeding 3,000 pounds gross weight at any time upon any of the streets or parts of streets so signed, except that such vehicles may be operated thereon for the purpose of delivering or picking up materials or merchandise or for vehicle storage and then only by entering such street at the intersection nearest the

destination of the vehicle and proceeding thereon no farther than the nearest intersection thereafter.

(Code 1968, § 46-252)

Secs. 45-273—45-285. Reserved.

ARTICLE XI. ACCIDENTS*

Sec. 45-286. Report required.

(a) The driver of a vehicle involved in an accident within the city limits resulting in property damage in excess of twenty-five dollars (\$25.00) shall report such accident either to the investigating police officer or in person to the police department, within twenty-four (24) hours of its occurrence.

(b) Whenever the driver of a vehicle is physically incapable of making a required accident report and there was another occupant in the vehicle at the time of the accident capable of making a report, such occupant or representative shall make or cause to be made such report.

(Code 1968, § 46-268)

Cross references—Requests for accident reports, § 2-96; charge for records furnished by police department, § 2-97.

Sec. 45-287. Garage keeper to report damaged vehicle.

The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in an accident or struck by any bullet shall file a written report of same with the police department within twenty-four (24) hours after such vehicle is received and before any repairs have been made, giving the make of the vehicle and its engine number and the name and address of the person representing himself as being in charge of such vehicle.

(Code 1968, § 46-269)

***Cross references**—Automobile wreckers, § 8-101 et seq.; use of taxicabs after accident, § 46-38; taxicab accident reports, § 46-39.

Sec. 45-288. Parking or loitering near scene of collision.

(a) It shall be unlawful for the driver of any motor vehicle to park or stand the same on a public street within twenty-five (25) feet of any place where a collision has occurred between two (2) or more other vehicles or one (1) or more vehicles and a pedestrian, until such time as the vehicles involved in such collision and any persons injured or killed have been removed from such place. It shall be unlawful for any person to loiter in the vicinity of any such collision, or to stand in the street within two hundred (200) feet of the place where the same occurred until such time as the vehicles involved, and any person injured or killed, have been removed therefrom.

(b) The provisions of subsection (a) shall not apply to peace officers, state, county or city officials in the discharge of their official duties, justices of the peace, members of the Harris County Emergency Corps, authorized representatives of daily newspapers, drivers of ambulances, passengers of any vehicle involved in any such collision, persons requested by a police officer to remain at the scene for the purpose of giving information to such officer, or to the driver of any automobile wrecker, after such driver has received specific authorization from a police officer to remove any vehicle involved in such collision.

(Code 1968, § 46-271)

Secs. 45-289—45-300. Reserved.

ARTICLE XII. BICYCLES†

DIVISION 1. GENERALLY

Sec. 45-301. Authority to prohibit riding on roadways.

The traffic engineer is authorized to erect signs on any roadway prohibiting the riding of bicycles thereon and, when such signs are in place, no person shall disobey the same.

(Code 1968, § 46-284)

†Cross reference—Riding bicycles in restricted airport areas, § 9-66.

Sec. 45-302. Riding on sidewalks.

(a) No person shall ride a bicycle upon a sidewalk within a business district.

(b) The traffic engineer is authorized to erect signs on any sidewalk outside a business district prohibiting the riding of bicycles thereon by any person and, when such signs are in place, no person shall disobey the same.

(c) Whenever any person is riding a bicycle upon a sidewalk, such person shall yield the right-of-way to any pedestrian and shall give audible signal before overtaking and passing any pedestrian. (Code 1968, § 46-285)

Secs. 45-303—45-310. Reserved.

DIVISION 2. REGISTRATION

Sec. 45-311. Required.

(a) It shall be unlawful for any person to operate a bicycle wholly or in part by muscular power within the city unless such bicycles is registered with the city as provided in this division.

(b) Any person operating a bicycle which is owned by a nonresident of the city and which is currently licensed pursuant to the requirements of any other Texas municipality shall be exempt from subsection (a).

(c) The term "operate" as used in this section shall mean to ride, walk with, park, stand, or be in possession of; excluded from the meaning of this term shall be in the possession of bicycles held for sale by one who engages in the business of the retail or wholesale sale of bicycles. (Code 1968, § 46-289; Ord. No. 72-1598, § 1(1), 9-6-72)

Sec. 45-312. Administration.

The police department shall administer the provisions of this division except where hereinafter otherwise provided. The police chief or his authorized agent shall issue consecutively numbered books of bicycle licenses to the fire chief or his authorized agent. The officer in charge of each fire station shall be responsible for registration,

issuance of licenses or decals and the collection of moneys as provided for in this division.

(Code 1968, § 46-290; Ord. No. 72-1598, § 1(2), 9-6-72)

Sec. 45-313. Procedures, fees, etc.

Bicycles shall be registered at any fire station in the city pursuant to the following terms, conditions and requirements:

- (1) The bicycle shall be brought to the fire station.
- (2) A registration form provided by the city shall be filled out and signed by the owner of the bicycle.
- (3) A registration fee of one dollar (\$1.00) shall be paid in advance.
- (4) As evidence of the completion of the above paragraphs, the city shall provide a decal or license plate which shall be permanently affixed to the bicycle according to specifications established by the police department. The city shall also furnish the owner with a registration card.

(Code 1968, § 46-291; Ord. No. 72-1598, § 1(3), 9-6-72)

Sec. 45-314. Registration to be permanent until change of ownership.

The registration of a bicycle shall be permanent so long as the ownership thereof remains in the person registering the bicycle. Upon any change of ownership, the bicycle shall be registered in the name of the new owner in accordance with the requirements of this division.

(Code 1968, § 46-292; Ord. No. 72-1598, § 1(4), 9-6-72; Ord. No. 74-1732, § 1, 10-1-74)

Sec. 45-315. Removal, destruction, etc. of manufacturer's serial number, license plate or license decal.

It shall be unlawful for any person to willfully or maliciously remove, destroy, deface or alter the manufacturer's serial number on the frame of any bicycle, or the license plate or license decal applied or attached to any bicycle registered under this division, while such plate or decal is valid.

Violation of this section shall be punished as provided by section 1-6 of this Code.

(Code 1968, § 46-293; Ord. No. 72-1598, § 1(5), 9-6-72; Ord. No. 92-1449, § 63, 11-4-92)

Charter reference—Penalty for ordinance violation, Art. II, § 12.

Cross references—Assessment of fines against corporations, § 16-76; payment of fines, § 16-78; credit against fines for incarceration, § 35-6 et seq.

Sec. 45-316. Sale or transfer of ownership of bicycle.

It shall be the duty of any person who sells or transfers ownership of any bicycle registered under this division to report such sale or transfer, within ten days thereof, to the police department of the city by returning the registration card together with the name and address of the person to whom the bicycle was sold or transferred. It shall be the duty of the purchaser or transferee of any bicycle to register same according to the provisions of section 45-313 of this Code, within 20 days of the sale or transfer.

(Code 1968, § 46-294; Ord. No. 72-1598, § 1(6), 9-6-72)

Sec. 45-317. Reports of bicycles permanently removed from operation.

Within ten days after any bicycle licensed under this division shall have been dismantled, destroyed or otherwise permanently removed from operation, such information shall be reported to the police department by the person in whose name the bicycle was last registered.

(Code 1968, § 46-295; Ord. No. 72-1598, § 1(7), 9-6-72)

Sec. 45-318. Monthly reports of dealers.

Every person engaged in the business of buying, selling, trading or otherwise exchanging new or used bicycle or bicycle frames shall make a monthly report to the chief of police of every bicycle or bicycle frame bought, sold, or otherwise acquired or transferred, giving the name and address of the person from whom acquired or to whom transferred, a description of such bicycle or bicycle frame by name or make, the manufacturer's serial number and the license number, if any,

found thereon. Any violation of this section shall be punished as provided by section 1-6 of this Code.

(Code 1968, § 46-296; Ord. No. 72-1598, § 1(8), 9-6-72; Ord. No. 92-1449, § 64, 11-4-92)

Charter reference—Penalty for ordinance violation, Art. II, § 12.

Cross references—Assessment of fines against corporations, § 16-76; payment of fines, § 16-78; credit against fines for incarceration, § 35-6 et seq.

Sec. 45-319. Responsibility of parents or guardians; penalty.

It shall be unlawful for any person to commit, or for the parent or guardian of any minor to knowingly allow or permit their child or ward to commit any act forbidden by this division or to fail to do any act required by this division. Unless expressly provided otherwise in this division, a violation of this division shall be punishable by a fine of not more than \$5.00.

(Code 1968, § 46-297; Ord. No. 72-1598, § 1(9), 9-6-72; Ord. No. 72-2309, § 1, 12-20-72)

Charter reference—Penalty for ordinance violation, Art. II, § 12.

Cross references—Assessment of fines against corporations, § 16-76; payment of fines, § 16-78; credit against fines for incarceration, § 35-6 et seq.

Secs. 45-320—45-324. Reserved.

DIVISION 3. BICYCLE HELMETS

Sec. 45-325. Definitions.

In this division the following words and terms shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Child means any person under 18 years of age.

Dealer means any commercial establishment that sells or leases new or used bicycles, whether as its principal business activity or in connection with the selling or leasing of other merchandise, from a place of business within the city.

Fund means the bicycle helmet fund created under section 45-329 of this Code.

Helmet means a properly fitted bicycle helmet that is not structurally damaged and that con-

formed to the standards of the American National Standards Institute, the American Society for Testing and Materials, the Snell Memorial Foundation or any federal agency having regulatory jurisdiction over bicycle helmets, as applicable, at the time of the manufacture of the helmet.

Parent means the natural or adoptive parent or court-appointed guardian or conservator of a child.

Public way means any property that is publicly owned or maintained, including, but not limited to, a "street or highway" as defined in section 45-2 of this Code, a publicly maintained trail, and any public parks facility.

Wearing a helmet means that the person has a helmet fastened securely to his head with the straps of the helmet securely tightened.
(Ord. No. 95-813, § 1, 7-12-95)

Sec. 45-326. Helmet required.

(a) It is unlawful for any child to operate or ride upon a bicycle or any side car, trailer, child carrier, seat or other device attached to a bicycle unless the child is wearing a helmet.

(b) It is unlawful for a parent to suffer or permit a child under 14 years of age to operate or ride upon a bicycle or any side car, trailer, carrier, seat or other device attached to a bicycle unless the child is wearing a helmet.

(c) It is a defense to prosecution that the bicycle was not being operated upon a public way at the time of the alleged offense.

(d) It is an affirmative defense to prosecution under this section, upon first offense only, that the person owns or has acquired a helmet prior to the court hearing and promises the court that the helmet will be used in the future.
(Ord. No. 95-813, § 1, 7-12-95)

Sec. 45-327. Sale or lease of bicycles by dealers.

(a) It shall be unlawful for any dealer to sell a bicycle, bicycle side car, trailer or child carrier without providing a written statement to the purchaser advising of the terms of this division. The statement shall be in a form promulgated by the chief of police. Upon request, the chief of

police shall provide a sample of the required form to a dealer. However, printing of distribution copies shall be at the dealer's expense.

(b) It shall be unlawful for any dealer to lease a bicycle to any person without providing a helmet for the use of each child who will operate or ride upon the bicycle or determining that each child who will operate or ride upon the bicycle has a helmet available. The dealer may impose an additional fee for use of the helmet if the dealer sells or leases a helmet to the bicycle lessee.
(Ord. No. 95-813, § 1, 7-12-95)

Sec. 45-328. Penalty.

(a) Any person who violates any provision of this division shall be guilty of a misdemeanor and upon conviction shall be fined an amount not exceeding \$50.00 upon first conviction and an amount not exceeding \$100.00 upon the second and each subsequent conviction.

(b) The purpose of this division is to encourage the use of helmets. In keeping with that purpose, the municipal courts are urged to consider deferred dispositions under article 45.54 of the Texas Code of Criminal Procedure whenever the circumstances warrant deferred dispositions. Conditions of the deferral may include that the defendant, if financially able, has obtained a helmet and has agreed to make a contribution in support of the fund.
(Ord. No. 95-813, § 1, 7-12-95)

Sec. 45-329. Bicycle helmet fund.

(a) The bicycle helmet fund is hereby created. The fund shall accept donations of helmets and money to be used for the purchase of helmets. All monetary gifts to the fund shall constitute a trust that shall be deposited in the city's trust and agency account, which may be invested as provided in chapter 104 of the Texas Local Government Code.

(b) The fund shall be used exclusively for the purpose of providing bicycle helmets for the use of members of "very low income families" as defined in 24 Code of Federal Regulations, section 813.102, as computed for the city for purposes of section 8 of the United States Housing Act of 1937. The

directors of the parks and recreation department and the health and human services department shall jointly administer the fund and shall promulgate rules and procedures for the distribution of helmets. Helmets shall be provided on a first-come-first-served basis to the extent of available supply.

(Ord. No. 95-813, § 1, 7-12-95)

Secs. 45-330—45-335. Reserved.

ARTICLE XIII. RESTRICTED ACCESS LANES

Sec. 45-336. Definitions.

As used in this article, the following terms shall have meanings as set out below:

- (1) *Authorized vehicle* shall mean a vehicle authorized by the commission to enter and to use a restricted access lane, which vehicle has affixed to it, in the place prescribed by the commission, a valid and unexpired identifying sticker or emblem issued by the commission, or by the authority of the commission, specifically for such vehicle.
- (2) *Commission* shall mean the state highway and public transportation commission.
- (3) *Restricted access lane* shall mean that portion of any highway facilities located in, upon or over a controlled access highway:
 - a. Which is restricted to one-way operation by the commission;
 - b. To which access is allowed only for certain vehicles providing mass transportation services, as prescribed by the commission;
 - c. To which access is allowed only at certain points designated by the commission; and

- d. Which is marked and regulated by official signs and traffic-control devices erected by the commission or by its authority.

(Code 1968, § 46-401; Ord. No. 79-1214, § 1, 7-25-79)

Sec. 45-337. Use.

It shall be unlawful for any person, other than a driver or passenger within an authorized vehicle, to operate any vehicle in or upon a restricted access lane, or to enter a restricted access lane otherwise, during the hours that access to such lane is restricted by the commission.

(Code 1968, § 46-402; Ord. No. 79-1214, § 1, 7-25-79)

Secs. 45-338—45-340. Reserved.

ARTICLE XIV. BOOTING AND TOWING DELINQUENT VEHICLES AND OTHER ENFORCEMENT PROVISIONS*

Sec. 45-341. Definitions.

As used in this article the following words and phrases shall have the meanings ascribed in this section, unless the context of their usage clearly indicates another meaning:

Appearance means either:

- (1) The entry of an appearance, in person or through legal counsel, in the municipal court system to contest a parking citation and the making of a bond in any manner authorized by law and approved by the municipal courts to secure appearance at the trial or administrative hearing, as applicable; or
- (2) The uncontested disposition of a parking citation by payment in good and sufficient funds received by the director in the applicable amount established by the munic-

*Editor's note—Ord. No. 03-642, § 1, adopted July 16, 2003, amended the title of Art. XIV from booting or towing delinquent vehicles to read as herein set out.

Cross references—Stopping, standing and parking generally, § 45-111 et seq.; parking meters, § 45-161 et seq.; removal and impoundment of vehicles, § 45-201 et seq.

ipal courts for the uncontested payment of the fine for the parking citation, including all applicable fees and costs.

Boot means a lockable road wheel clamp or similar device, which is designed to immobilize a parked vehicle and prevent its operation until the device is unlocked and removed, or (verb) the act of installing such a device.

City vehicle compound means a vehicle storage facility to which vehicles owned by persons other than the city are towed upon direction of peace officers and other authorized personnel of the city. The term includes both facilities that are owned and operated by the city and facilities that are designated by contract with the city to act as city vehicle compounds for purposes of this article.

Delinquent vehicle means any vehicle on which three or more unresolved parking citations are outstanding, which were issued during the time it has been registered to or otherwise held by the owner.

Delinquent vehicle list means the current delinquent vehicle list as maintained by the director under section 45-343 of this Code.

Director means the chief clerk of the municipal courts and those of his deputies or other employees as he may designate to perform any function under this article.

Officer means any peace officer employed by the city and any other city employee, whether a peace officer or not, who is designated by the director to place and remove boots or to cause vehicles to be towed under this article. The city may also authorize persons who are not city employees to act as an "officer" for the purpose of installing or removing boots by contract.

Owner means the person registered with the state as the present owner of a vehicle in the most current registration records available to the city, or any transferee not designated in such records, provided that the director has received actual notice of the transfer.

Parking citation means a citation, returnable in the municipal courts of the city, issued for the alleged violation of any city ordinance or state penal law regarding the parking of vehicles.

Unresolved, with respect to a "parking citation," means a citation issued and not cleared by an appearance within 45 days of issuance.

Vehicle means either a "motor vehicle" or a "trailer" as those terms are defined in section 45-2 of this Code, provided that it shall not include a vehicle registered to any governmental entity or agency thereof.

(Ord. No. 87-1487, § 2, 9-2-87; Ord. No. 94-218, § 1, 3-2-94; Ord. No. 95-81, § 4, 1-25-95; Ord. No. 96-1002, § 3, 9-25-96; Ord. No. 02-1167, § 1, 12-18-02; Ord. No. 03-642, § 2, 7-16-03)

Sec. 45-342. Purpose.

Pursuant to the provisions of this article an officer may cause a delinquent vehicle designated on the delinquent vehicle list to be booted, or towed, or both.

(Ord. No. 87-1487, 9-2-87)

Sec. 45-343. Delinquent vehicle list.

(a) The director shall be responsible for creating and maintaining the delinquent vehicle list.

(b) A delinquent vehicle may be placed on the delinquent vehicle list after notice has been issued as provided in subsection (c), and a hearing, if requested, under subsection (d).

(c) At least 15 days prior to placing a delinquent vehicle on the delinquent vehicle list, the director shall mail a notice to the owner, at the address stated on the most current registration records available to the city from the state, or any more current address of which the director has actual notice, by first-class United States mail, postage prepaid. The notice shall set forth:

- (1) The make, year, model, license plate number and identification number of the alleged delinquent vehicle;
- (2) A date certain on which the delinquent vehicle will be subject to placement on the delinquent vehicle list;
- (3) A list of the three or more alleged unresolved parking citations, including the citation number, date, time, place of the violation, and the nature of the violation.

- (4) That the owner may avoid the vehicle's being placed on the delinquent vehicle list by making an appearance on the unresolved parking citations;
- (5) The name, mailing address (and street address if different), and telephone number of a city office or agency that may be contacted for a hearing if any of the alleged unresolved parking citations has been resolved by appearance, or if the recipient was not the owner of the vehicle when any of the alleged unresolved parking citations was issued, or if the title to the vehicle has been transferred since the unresolved parking citations were issued; and
- (6) That administrative fees, boot fees, and towing/storage fees may be payable to obtain the release of a vehicle booted or towed pursuant to this article in addition to appearance on any unresolved parking citations.

The notice required under this section may be mailed for a vehicle that is not yet a delinquent vehicle, provided that there are already two unresolved parking citations and that a fourth parking citation (which shall also be specified in the notice) will become unresolved if an appearance is not made thereon by the date specified for placement of the vehicle on the delinquent vehicle list.

(d) After expiration of the date certain provided the notice issued under subsection (c), the director shall review the records to ensure that the alleged unresolved citations have not been resolved by appearance, and that no information has been received indicating that the notice was erroneous. The director shall not have the authority to adjudicate any parking citation; however, he shall meet with any person desiring to present evidence that a notice given under subsection (c) is erroneous, shall afford the person an opportunity to present any relevant evidence on the matter, and shall mail or otherwise furnish a written notice to the person of his decision.

If the request for a hearing is received by the director before the date specified in the notice for placement of the vehicle on the delinquent vehicle list, then the director shall afford the applicant an

opportunity for a hearing prior to placing the vehicle on the delinquent vehicle list, and, if the applicant timely appears for the hearing as scheduled by the director, shall furnish the applicant written notice of his decision prior to placing the vehicle on the delinquent vehicle list.

(e) Once a vehicle has been placed on the delinquent vehicle list it shall not be removed from the list unless and until:

- (1) All unresolved parking citations issued during the time it has been registered to or otherwise held by the owner are resolved by appearance;
- (2) The director receives reliable information that the vehicle was not registered to its current owner at the time the unresolved citations were issued;
- (3) The director receives reliable information that title to the vehicle has been transferred; or
- (4) The director determines that the placement of the vehicle on the delinquent vehicle list was erroneous.

(Ord. No. 87-1487, § 2, 9-2-87; Ord. No. 94-218, §§ 2-4, 3-2-94; Ord. No. 96-1002, § 4, 9-25-96; Ord. No. 02-1167, § 2, 12-18-02)

Sec. 45-344. Booting or towing procedures.

(a) An officer may boot any vehicle then parked, lawfully or unlawfully, upon any street or highway within the city, or upon any other property under the ownership or control of the city. An officer may also boot any vehicle on property not owned or controlled by the city provided that parking citations may lawfully be issued for violation of city or state laws regarding the parking of vehicles on the property and further provided that the owner of the property gives written consent to the director for the installation of boots on the property.

An officer may cause the vehicle to be towed in lieu of being booted:

- (1) If the vehicle, when located by the officer, was parked in violation of any city ordinance or state penal law relating to parking of vehicles;

- (2) Under any circumstances in which towing by a peace officer is authorized by city ordinance or state law;
- (3) If the location, configuration or size of the vehicle's tires, wheels, fender wells or other components makes the installation of any available boot owned by the city impracticable;
- (4) If, based upon the age, model and condition of the vehicle, or the incidence of vehicular crimes in the area where the vehicle is located, or other relevant factors, the officer reasonably believes that there is a significant possibility of theft or damage relating to the vehicle if it is immobilized in place;
- (5) If the owner has been convicted of any crime relating to the removal of, tampering with or theft of a boot previously installed by the city on any vehicle; or
- (6) If the owner or operator of the vehicle requests, in writing, that the vehicle be towed.

A vehicle that has already been booted may be towed by an officer if any of the circumstances enumerated in items (1) through (6) above exists, or if:
- (7) The owner has not made arrangements with the director to secure removal of the boot within 72 hours after its installation; or
- (8) The vehicle remains immobilized in any zone where parking is prohibited during certain hours until the commencement of the restricted hours.

In each instance where a vehicle is to be towed, the officer authorizing the towing shall be a peace officer.

(b) At the time of booting or towing of a vehicle under this article the officer shall:

- (1) Check or cause to be checked the appropriate records to ensure that the vehicle is properly listed on the delinquent vehicle list;

- (2) Check or cause to be checked the most current vehicle registration records available to the city to ensure that the ownership of the vehicle is not reflected to have changed from that specified on the delinquent vehicle list;
- (3) If booted, notify any office designated by the director and place a conspicuous notice or notices in a form approved by the director on the vehicle warning the operator or any other person not to attempt to move the vehicle and advising the operator of the means by which the boot may be removed, including the right of the hearing; and
- (4) If towed, notify the police dispatcher and any other office designated by the director so that they may respond promptly to any inquiry about the vehicle's disappearance.

(c) A vehicle may be booted or towed at any time on any day, provided that a hearing officer is then on duty to conduct any hearing requested pursuant to section 45-346 of this Code, and that a hearing officer will remain on duty for such purpose until at least two hours after the time that boot is installed.

(d) Vehicles shall be towed to a storage lot operated by the city or to a city-licensed storage lot operated under contract with the city. Each lot that is utilized shall have an attendant on duty or available for the release of vehicles from at least 6:00 a.m. to 9:00 p.m., Monday through Saturday, city observed holidays excepted, and shall have an attendant on call who will come to the lot upon one hour's notice at all other times.

(e) The director shall ensure that officers are available, either on duty or on call, to remove boots from vehicles on a 24 hours per day, seven days per week basis. An officer shall remain on duty until at least two hours after a boot is installed. At other times, an officer shall be on call to remove a boot upon two hours' notice.
(Ord. No. 87-1487, § 2, 9-2-87; Ord. No. 87-2080, § 1, 12-30-87; Ord. No. 94-218, §§ 5, 6, 3-2-94; Ord. No. 95-81, § 5, 1-25-95)

Sec. 45-345. Fees, release.

Except as provided in section 45-346 of this Code, the claimant of a vehicle may not secure the release of the vehicle until an appearance has been made on all unresolved parking citations relating to the vehicle which were issued while the vehicle was owned by the person who owned the vehicle at the time it is booted or towed hereunder, and the claimant has paid the following fees, as applicable:

- (1) An administrative fee, if the vehicle has been booted or towed, or both, of \$100.00 to defray the city's administrative costs in placing the vehicle on the delinquent vehicle list and related expenses under this article.
- (2) A boot fee if the vehicle has been booted, of \$100.00 to defray the city's costs of installing, removing and maintaining the boot.
- (3) Towing/storage and related fees, if the vehicle has been towed, in an amount established by the director, based upon the city's cost or upon the fees imposed by the city's contractors, as applicable. If the vehicle has been towed and stored by city contractors, then the director may provide that the towing/storage fees be paid directly to the contractors, rather than to the city.

Towed vehicles that are not redeemed within 30 days shall be subject to disposition in the same manner provided by chapter 683, Texas Transportation Code, for sale of abandoned motor vehicles by police auction after notice to the owner and lienholders. No person shall be permitted to claim a vehicle without proof of identity. If the person claiming the vehicle is not the owner or a family member residing at the same address as the owner, based upon the most current vehicle registration data available to the city, then proof shall also be required that the claimant is the owner or is redeeming the vehicle with the consent of the owner.

All fees and/or revenues generated from fees imposed under this section shall be divided evenly

between the city's general fund and the police special services fund administered by the police department.

(Ord. No. 87-1487, § 2, 9-2-87; Ord. No. 87-2080, § 2, 12-30-87; Ord. No. 94-218, § 7, 3-2-94; Ord. No. 04-337, § 2, 4-21-04)

Sec. 45-346. Hearing.

(a) The director shall designate one or more persons to act as hearing officers and conduct post-deprivation hearings for persons whose vehicles have been booted or towed under this article.

(b) Hearings shall be conducted on a first-come, first-served basis without the necessity of a prior appointment. The hours when hearings will be conducted and the place or places where they will be conducted shall be established by the director, provided that hearings shall be conducted at least between 8:00 a.m. and 5:00 p.m., on Mondays through Fridays, city observed holidays excepted.

(c) The applicant may secure release of the vehicle pending the hearing by making an appearance on the unresolved parking citations and posting a bond for the administrative and boot fees prescribed in section 45-345 of this Code, as applicable. If a bond is posted then a hearing may then be scheduled for a date and time certain, and the vehicle shall be released. If the vehicle has been towed, then the applicant shall also be required to post a bond for the towing/storage fees or to make payment of the towing/storage fees to the city's contractor, as applicable, subject to reimbursement as provided in subsection (f), below.

(d) The hearing officer shall be a person who is not associated with the maintenance of the delinquent vehicle list, nor shall the hearing officer hear any appeal in which he has personally participated in any decision relating to the booting or towing of the vehicle.

(e) The only issues before the hearing officer will be whether or not the vehicle was a delinquent vehicle owned by the person designated on the delinquent vehicle list at the time it was booted or towed under this article and whether the city has complied with this article in placing it

on the delinquent vehicle list and causing it to be booted or towed, or both. The hearing officer shall have no authority to adjudicate any unresolved parking citation. The hearing officer may consider any competent evidence, including, but not limited to, public records and testimony from the applicant and city employees. The applicant may be represented by legal counsel and may cross-examine any witness presented by the city. Each applicant must appear at the hearing and shall be subject to examination on any matter relevant to the issues before the hearing officer. The hearing officer shall announce and record his decision within one hour following the conclusion of the hearing.

(f) If the hearing officer determines that the vehicle was not a delinquent vehicle owned by the person designated on the delinquent vehicle list at the time it was booted or towed under this article, or that the city has not complied with this article in placing the vehicle on the delinquent vehicle list and causing it to be booted or towed, or both, then the vehicle shall be ordered released without payment of the fees prescribed in section 45-345. Vehicle storage and related fees shall be payable for each twenty-four-hour period or portion thereof that a towed vehicle remains in storage after the hearing officer orders its release if not reclaimed within 24 hours after the hearing officer orders its release. If a bond had been posted for the administrative, boot, or towing/storage fees prescribed in section 45-345 of this Code, the bond shall be ordered to be refunded to the applicant. Furthermore, the city shall reimburse the applicant for any towing/storage fees that the applicant may have paid to a city contractor in order to secure release of the vehicle if those fees have been directly incurred by the applicant.

(g) A hearing under this section shall be requested before the sixth day following the initial booting or towing of the vehicle by the city. A hearing requested thereafter will be granted if the city has not disposed of the vehicle, provided the owner must pay the vehicle storage and related fees for each day after the sixth day until the vehicle is reclaimed, regardless of the hearing officer's determination.

(h) In any instance in which a vehicle has been towed to a vehicle storage facility not owned by the city, then the applicant may alternatively request a hearing under article 6701g-3, Texas Revised Civil Statutes, before the municipal court in the time and manner provided by article 6701g-3. Except for a proceeding filed under article 6701g-3 relating to a vehicle which has actually been towed to a vehicle storage facility not owned by the city, the judges of the municipal courts shall have no authority to adjudicate any fee imposed under section 45-345 of this Code, or to order any release of a vehicle without payment of applicable fees, or to order a refund of applicable fees. (Ord. No. 87-1487, § 2, 9-2-87; Ord. No. 94-218, §§ 8, 9, 3-2-94)

Sec. 45-347. Certain conduct unlawful.

(a) It shall be unlawful for any person, other than an officer or employee of the city acting in the course and scope of his duties under this article, to remove or attempt to remove or to tamper in any manner with a boot installed on any vehicle pursuant to this article.

(b) It shall be unlawful for any person, except under the written direction of a peace officer, to tow or move or to cause to be towed or moved any vehicle on which a boot is then installed pursuant to this article from the place where it was booted.

(c) It shall be unlawful for any person, other than an officer or employee of the city acting in the course and scope of his duties or the owner or operator of a booted vehicle, to remove or relocate any notice placed upon a booted vehicle under section 45-344(b)(3) of this Code.

(d) Any offense under this section shall be punishable upon conviction by a fine of not less than \$200.00 nor more than \$500.00, and each day that any violation continues shall constitute a separate offense. To the extent that any conduct declared to be unlawful under this section also constitutes a violation of any valid and applicable state law, then such unlawful conduct shall be punishable as provided by state law.

(Ord. No. 87-1487, § 2, 9-2-87; Ord. No. 92-1449, § 65, 11-4-92)

Charter reference—Penalty for ordinance violations, Art. II, § 12.

Cross references—General penalty for Code violations, § 1-6; general penalty for violations of this chapter, § 45-22.

Sec. 45-348. Release of vehicles from city vehicle compound.

A vehicle that is towed to a city vehicle compound for reasons initially unrelated to the booting or towing procedures established under this article shall not be released until it has been verified that the vehicle does not appear on the delinquent vehicle list. If the vehicle appears on the delinquent vehicle list and if a review of the most current vehicle registration records available to the city indicates that the ownership of the vehicle has not changed from that reflected on the delinquent vehicle list, then the vehicle shall be subject to the fee and release provisions of section

45-345 of this Code and hearing provisions of section 45-346 of this Code. This section shall apply without regard to the day or the time that the vehicle was initially towed. However, if the towing was not initiated at a time otherwise authorized for towing under subsection (c) of section 45-344, then the director shall ensure that a hearing is afforded within two hours of a request therefor or alternatively authorize the vehicle to be released without resolution of the parking citations.

(Ord. No. 03-642, § 3, 7-16-03)

Secs. 45-349—45-360. Reserved.**ARTICLE XV. NEIGHBORHOOD TRAFFIC PROJECTS*****Sec. 45-361. Definitions.**

As used in this article, the following words and terms shall have the meanings ascribed to them in this section unless the context of their usage clearly indicates a different meaning:

Access street has the meaning ascribed in section 42-7 of this Code.

Applicant means one or more property owners or residents within a neighborhood area, a duly authorized representative of a neighborhood association or the director who makes a request for the construction of a project.

Collector street means a street that is not a designated major thoroughfare, but that provides access and circulation between major thoroughfares and local, access and interior streets.

Designated street means that portion of a particular street, within the right-of-way of which a device is proposed to be constructed under this article. Designated streets may include the rights-of-way of access, interior or local streets, but may not include any portion of a major thoroughfare.

***Editor's note**—Ord. No. 95-1070, § 1, adopted Oct. 4, 1995, did not specifically repeal former art. XV, §§ 45-361—45-373, which pertained to similar subject matter; hence, said ordinance has been treated as superseding the provisions of former art. XV.

Device means a traffic mitigation device, consisting of the physical structure or other improvement constructed, placed or located, whether on a temporary or a permanent basis, upon a designated street pursuant to this article.

Director means the director of the department of public works and engineering or the traffic engineer or any other person designated by the said director to perform the director's duties under this article.

Interdepartmental review committee means a committee consisting of one representative each of the fire, police, planning and development, solid waste management, and public works and engineering departments of the city who shall be appointed by the mayor and one representative designated by the Metropolitan Transit Authority of Harris County.

Interior street has the meaning ascribed in section 42-7 of this Code.

Local street has the meaning ascribed in section 42-7 of this Code.

Neighborhood area means any contiguous area within the city that has as its boundaries: (i) the interior right-of-way line of any major thoroughfare or collector street; (ii) the interior boundary or right-of-way line of any railroad line, utility or pipeline corridor, river or waterway (not including drainage or flood control ditches not being traversed by other streets within the general locale); (iii) the corporate limits of the city; or (iv) any combination of one or more of the foregoing boundaries. A neighborhood area may consist of one or more subdivisions and shall include only those properties within and fronting on or taking their only access from a street within the bounded area.

Neighborhood association means any homeowners' association, property owners' group or civic association, whether incorporated or not, whose membership includes property owners and/or residents of a neighborhood area.

Neighborhood traffic committee means a committee, consisting of not more than five members drawn from the residents or property owners

within a neighborhood area, selected as provided in section 45-366 of this Code, to assist in the processing of a request for a project.

Neighborhood traffic project or project means the entirety of the processes and procedures as described in this article whereby one or more devices may be placed upon a designated street in a neighborhood area.

Property owner means the owner(s) of any tract or parcel of real property within a neighborhood area.

Resident means any person who resides in or owns or operates a home or business upon any tract or parcel of real property within a neighborhood area.
(Ord. No. 95-1070, § 1, 10-4-95; Ord. No. 98-334, § 11, 4-29-98)

Sec. 45-362. Purpose; regulations.

(a) The purpose of this article is to establish the procedures governing the application for and review, approval, financing and construction of projects to minimize or eliminate traffic congestion, cut-through traffic or other traffic-related problems in a neighborhood area. In accordance with the provisions of this article, the director shall prepare and make available to the public appropriate forms to request a project.

(b) Consistent with the other provisions of this article, the director may promulgate request forms and may promulgate rules and regulations for the implementation of this article. A copy of the rules and regulations shall be maintained for public inspection in the offices of the said director, and copies may be purchased at the fees prescribed by law.

(Ord. No. 95-1070, § 1, 10-4-95)

Sec. 45-363. Request for projects.

(a) A request for a project must be initiated by an applicant. Multiple requests from the same or similar neighborhood areas may be consolidated into and considered as a single request, at the director's option.

(b) The director shall, from time to time, prepare and submit for approval by motion of the city council a schedule of fees that shall be paid by an applicant for a project. Payment of any applicable fees when due is a condition of the processing of a request under this article.

(Ord. No. 95-1070, § 1, 10-4-95)

Sec. 45-364. Preliminary review process.

(a) Each request for a project shall be made or forwarded by the applicant to the director upon a form promulgated for that purpose by the director and shall include, at a minimum, the following:

- (1) A description or definition of the proposed neighborhood area;

- (2) A list containing the names, addresses and telephone numbers of the individuals comprising the applicant or, in the case of a request from a neighborhood association, the name, address and telephone number of the duly authorized representative of the neighborhood association.
- (3) A general description of the traffic problem or condition to be remedied;
- (4) Historical data concerning the proposed neighborhood area, including, but not limited to, such factors as the location and nature of businesses, schools, parks, churches or other non-residential traffic generators within or in close proximity to the neighborhood area;
- (5) Evidence of neighborhood or community support for the project;
- (6) Whether public funding or assistance is requested for the project; and
- (7) Any other information reasonably required by rule or regulation of the director in order to make any determination specified under this article.

(b) Each request shall initially be reviewed for completeness. If determined to be complete, the request shall be considered to have been filed when received in the director's offices and shall be acted upon as further provided in this article. If determined to be incomplete, the request shall be returned to the applicant with written notice of the deficiencies.

(c) Each request that is properly filed shall be reviewed and evaluated in accordance with section 45-365 of this Code. If the director determines that the request does not merit further consideration, based upon the criteria set forth in section 45-365(1) through (5) of this Code, then the director shall so notify the applicant in writing and, wherever practicable to do so, shall provide any suggested modifications to the request that might cause it to receive more favorable consideration if resubmitted. For requests that the director determines merit further consid-

eration under the criteria of section 45-365(1) through (5) of this Code, the applicant shall be so advised in writing and shall also be advised:

- (1) If no public funding or assistance has been requested, that the project is eligible to proceed to an initial public meeting under section 45-366 of this Code; or
- (2) If public funding or assistance has been requested, whether or not the director has given preliminary approval for consideration of the project on a publicly funded basis under the criteria of section 45-365(6) of this Code, and:
 - a. If so, that the project is eligible to proceed to an initial public meeting under section 45-366 of this Code; or
 - b. If not, that the project will not be further considered or receive a public meeting under section 45-366 of this Code unless the applicant withdraws the request for public assistance or funding.

(d) All requests seeking public funding or assistance in the planning and/or construction of a project must be filed no later than March 1 preceding the commencement of the fiscal year in order to be eligible for funding during that fiscal year. Late filed requests shall be held for possible review for inclusion in a subsequent fiscal year's budget, unless the applicant elects, in writing, to proceed with private funding or withdraws the request.

(Ord. No. 95-1070, § 1, 10-4-95)

Sec. 45-365. Review criteria.

The director shall evaluate and prioritize all requests pursuant to the following criteria:

- (1) Whether the request identifies a problem that could be remedied under this article;
- (2) Whether the request identifies a problem that could readily be addressed through the installation of a type of traffic control device that may be installed without approval under this article;
- (3) Whether historical data concerning the neighborhood area, including, but not lim-

ited to, the location and nature of businesses, schools, parks, churches or other non-residential traffic generators within or in close proximity to the neighborhood area, may support the project;

- (4) Whether there is public support for the project as evidencing that the project will enhance and promote the public health, safety and welfare;
- (5) Whether existing evidence, studies, data or reports regarding the severity of the existing problem, if any, merit the project; and
- (6) For requests that include a public funding component, the amount of public funds available for planning of projects, the number of requests for publicly funded project planning, the apparent merit of the request as compared to that of other requests and established city priorities, including, but not limited to, the city's neighborhoods to standards program or low to moderate-income areas.

(Ord. No. 95-1070, § 1, 10-4-95)

Sec. 45-366. Initial public meeting; neighborhood traffic committee; citizen comments.

(a) Following the receipt of notification by the director that a project has received preliminary approval for further consideration, the applicant shall notify the director of a suitable location for the holding of a public meeting within the neighborhood area for the purpose of receiving public comments on the project.

(b) Following receipt by the director of the information required by subsection (a) above, a written notice, in a form approved by the director, shall be mailed to all property owners and residents within the neighborhood area setting forth the date, time and location of a public meeting to receive public input on a proposed project. The notice shall specify the location and general nature of the proposed project and shall solicit public comments on the project. The director shall select the method(s) utilized to identify the property owners and residents to be notified, with due regard to the cost, time and accuracy of the method(s) to be utilized.

(c) Each notice shall be effective when deposited in the U.S. mail, postage prepaid, addressed to the property owner, resident or representative of a neighborhood association. Failure of any person to receive actual notice of the hearing required by this section shall not affect the validity of any action taken by the city in connection with the project.

(d) At the initial public meeting:

- (1) A neighborhood traffic committee shall be selected by those present;
- (2) Public comments shall be received on the proposed project; and
- (3) Comment cards shall be distributed for additional comments and public input on the proposed project. Written comments concerning the project shall not be considered in evaluating any project unless received in the offices of the director or such other place as the director may specify within 14 days after the meeting.

(e) Persons in attendance may register, and the names and addresses of those who do register shall be delivered to the director and added to the notification list for any future meetings held in connection with a project.

(f) The initial public meeting shall be conducted by the director, and all requirements and expenses relating to its being conducted shall be borne by the city for requests that receive preliminary approval for further consideration as a publicly funded project pursuant to section 45-364(c)(2) of this Code. For all other requests, the initial public meeting shall be conducted in all respects at the expense of the applicant, and the director may delegate to the applicant the accomplishment of any one or more of the requirements of this section in accordance with rules and regulations promulgated for that purpose by the director. The applicant shall provide to the director evidence that any requirements so delegated have been fully and properly carried out.

(Ord. No. 95-1070, § 1, 10-4-95)

Sec. 45-367. Traffic studies.

Upon receipt of all public comments and information required by section 45-366, the director

shall cause or authorize to be conducted a traffic study to complete the preliminary eligibility review of a proposed project. Unless the director has given preliminary approval for consideration of the project on a publicly funded basis, the director shall determine, and notify the applicant concerning, the scope and type of traffic study to be conducted by the applicant and indicate any additional information required by the director to facilitate review of the proposed project. (Ord. No. 95-1070, § 1, 10-4-95)

Sec. 45-368. Completion of staff review.

The director shall determine, based upon all available information regarding a project, including, without limitation, any traffic study prepared in accordance with section 45-367 of this Code, whether the project is eligible for further consideration and processing in accordance with section 45-369 of this Code. The criteria to be utilized by the director in making his determination under this section are:

- (1) The estimated percentage of cut-through traffic in the neighborhood area;
- (2) The estimated percentage of the total volume of traffic through the neighborhood area consisting of trucks having more than two axles;
- (3) The percentage of residential land use in the neighborhood area;
- (4) The presence or absence of sidewalks in the neighborhood area; and
- (5) Evidence of neighborhood or community support for the proposed project.

Written notice of the director's determination shall be given to the applicant. Any applicant whose project is declared ineligible for further consideration pursuant to this section shall not be permitted to file a new request for the same or a similar project for a period of three years. (Ord. No. 95-1070, § 1, 10-4-95)

Sec. 45-369. Concept plan.

The director shall prepare a concept plan for each project approved pursuant to section 45-368, taking into account all traffic studies, public com-

ments and other data and factors developed in accordance with the requirements of this article. Each concept plan shall be reviewed by the neighborhood traffic committee and approved by the interdepartmental review committee and the city attorney before being submitted for public comments, as hereinafter provided. No concept plan or project shall be approved by the interdepartmental review committee if it is found that:

- (1) Pedestrian traffic or access to a neighborhood area would be denied or materially impeded;
- (2) General mobility of traffic in the neighborhood area, the surrounding community, or both, as determined by the city's traffic engineer, would be unreasonably adversely affected to a material extent;
- (3) Based upon review of any reasonably suitable alternative methods identified by the interdepartmental review committee to resolve the problem, that the proposed resolution is not the least restrictive device that could reasonably be expected to substantially mitigate or resolve the problem;
- (4) The project would prevent any owner of property from having direct vehicular access to at least one abutting street in the city; or
- (5) The project would be likely to significantly delay emergency services vehicles' ingress to or egress from neighborhoods.

The city attorney shall approve the concept plan unless he determines that its implementation would be contrary to local, state or federal laws or regulations. Written notice of the interdepartmental review committee and the city attorney's determination shall be given to the applicant. If either declines to approve a concept plan, the applicant shall be so notified and shall not be permitted to file a new request for the same or a similar project for a period of three years. (Ord. No. 95-1070, § 1, 10-4-95)

Sec. 45-370. Second public meeting.

(a) Upon approval of the concept plan, a second public meeting shall be held to gather public comments. Notice of the meeting shall be given in

the same manner and to the same parties notified of the initial public meeting, plus those persons who registered their names and addresses at the initial public meeting, and shall contain a description of the concept plan and a comment card for use by members of the public to address public safety, convenience and traffic issues and to express either support for or opposition to the concept plan. Unless the director has given preliminary approval for consideration of the project on a publicly funded basis, the director shall require that all expenses of conducting the second public meeting shall be borne by the applicant, and the provisions of section 45-366(f) shall also be applicable to the second public meeting.

(b) At the second public meeting, comments regarding the concept plan may be made by any interested party. Written comments concerning the plan shall not be considered unless received in the offices of the director or such other place as the director may specify within 14 days after the meeting.

(Ord. No. 95-1070, § 1, 10-4-95)

Sec. 45-371. Final review and ranking; recommendation by director.

(a) Following the close of the public comment period provided in section 45-370(b) above, the director shall evaluate each concept plan and shall compare it to all other unimplemented concept plans that have reached the same level in the approval process. The director shall either (i) disapprove the concept plan and its underlying request and so notify the applicant in writing; or (ii) approve the concept plan for further consideration and so notify the applicant in writing. The director shall give those concept plans receiving approval a priority ranking that shall be used to establish the order in which the various approved projects will be considered for implementation. If the director disapproves the concept plan, the applicant shall not be permitted to file a new request for the same or a similar project for a period of three years.

(b) Each concept plan must be tested with a temporary device and receive a recommendation of approval from the director before being submitted to city council for final approval. Unless the

project has been approved by the director for public funding assistance, the temporary device shall be installed at the applicant's sole expense. Each concept plan whose priority ranking is sufficient to indicate that public funding will be available to complete the project, if approved, during the current or next succeeding fiscal year and each concept plan for a project to be financed from private funding sources shall receive approval from the director for the construction of a temporary device, in accordance with its priority ranking, provided that the director may approve a temporary device for any ranked project without regard to its priority ranking in order to reflect special or changed circumstances or in order to avoid delay in implementing worthy projects that have not been approved for public funding. No temporary traffic device may be installed without the approval of the director. Temporary traffic control devices shall be in place for a testing period of not less than 90 days, provided that the director shall immediately remove a temporary device that is determined to be a threat to public health, safety or welfare.

(c) Upon authorization of installation of a temporary device:

- (1) The device, with appropriate signs, shall be constructed within the neighborhood area in accordance with the published concept plan;
- (2) City staff, the neighborhood traffic committee and the interdepartmental review committee shall monitor and review traffic impact and any comments received regarding the temporary device during the testing period; and
- (3) At least 90 but no more than 210 days following the installation of the temporary device, a third public meeting shall be called and conducted, in the same manner as for the second public meeting with written notice to the same parties notified as for the second public meeting and to those additional persons who registered their names and addresses at the second public meeting, to receive public comments regarding the temporary device. The provisions of section 45-366(f) of this Code shall also be applicable to the third public meeting.

(d) Upon the conclusion of the public meeting and expiration of the 14 day comment period following the third public meeting, the director shall review all of the available information regarding the temporary device, including timely received public comments, and either (i) remove or cause to be removed the temporary device and deny all or part of the concept plan or (ii) forward his recommendation for final approval of the concept plan to city council, during which time the temporary device may remain in place. Written notice of the director's action shall be given to the applicant. If the director disapproves the concept plan, in whole or in part, the concept plan or disapproved portions thereof may not be resubmitted as any part of a new request for the same or a similar project for a period of three years.

(e) If a project is proposed to be constructed by employees of the city or a city contractor, the director shall prepare and present to city council as part of his recommendation under subsection (d) above a preliminary cost estimate and time line for the project, which shall identify the source of funds to be used to finance the project and the time and priority in which the city would construct the project if the project is approved by city council.

(Ord. No. 95-1070, § 1, 10-4-95)

Sec. 45-372. Final action by city council.

(a) All projects forwarded to city council shall be accompanied by a summary setting forth in relevant detail the information relied upon in formulating the recommendation.

(b) The city council shall, by motion, approve or deny the request for the project.

(c) A decision by city council to approve or deny a request shall be final and shall not be subject to further appeal or rehearing. If the city council denies the request, the applicant shall not be permitted to file a new request for the same or a similar project for a period of three years.

(Ord. No. 95-1070, § 1, 10-4-95)

Sec. 45-373. Construction.

The director shall be responsible for the construction, or shall direct and oversee the construc-

tion by a private contractor or contractors, of approved projects. Approval under this article shall not excuse the applicant from obtaining any other permit or authorization required by law to perform the work.

(Ord. No. 95-1070, § 1, 10-4-95)

Sec. 45-374. Removal.

(a) Nothing contained in this article shall be construed to prohibit the city from removing any device or portion thereof. If, and only if, the device to be removed is a gate, then the removal must first be authorized by the city council.

(b) The director shall maintain an accurate record of each approved project, which he shall review every five years to determine its continued viability.

(Ord. No. 95-1070, § 1, 10-4-95; Ord. No. 98-1162, § 1, 12-9-98)

Sec. 45-375. Limitation on action of city.

The approval, installation and maintenance of a project and associated devices, as provided for by this article, shall never be construed to cause an abandonment or relinquishment of any street or public property or to authorize the installation of a device upon any right-of-way not under the control of the city.

(Ord. No. 95-1070, § 1, 10-4-95)

Sec. 45-376. Coordination with city council offices.

The director shall cause notice to be given to each city council member of the filing of a request for a project under this article. Thereafter, notice shall be given to each district council member whose district includes any part of the neighborhood area and to any other city council member who so requests of the progress of the request under this article, including, but not limited to, notice of each public meeting, the concept plan, the traffic study and the proposed installation of any temporary device.

(Ord. No. 95-1070, § 1, 10-4-95)

Secs. 45-377—45-379. Reserved.

ARTICLE XVI. ADJUDICATION OF PARKING CITATIONS

Sec. 45-380. Jurisdiction.

The municipal courts judicial department shall have original jurisdiction over cases involving violations of city ordinances enumerated in articles VI and XVII of this chapter and of division 1 of article VII of this chapter and of offenses involving the parking or stopping of a vehicle that arise under the Fire Code of the city.

(Ord. No. 95-81, § 1, 1-25-95; Ord. No. 95-186, § 3, 2-22-95; Ord. No. 01-759, § 6, 8-15-05; Ord. No. 04-799, § 5, 7-28-04; Ord. No. 06-533, § 2, 5-31-06)

Sec. 45-381. Procedures.

The director of the municipal courts judicial department shall establish and implement appropriate procedures to effect the policy of this article.

(Ord. No. 95-81, § 1, 1-25-95; Ord. No. 06-533, § 2, 5-31-06)

Sec. 45-382. Adjudicative hearing officers.

(a) The municipal courts judicial department shall employ one or more adjudicative hearing officers who shall be appointed by the mayor. Staff required for the support of the adjudicative hearing officer's functions shall be provided by the clerk of the municipal courts.

(b) Adjudicative hearing officers shall have the authority to administer oaths and to issue orders compelling the attendance of witnesses and production of documents.

(c) An order compelling the attendance of witnesses or production of documents may be enforced by the municipal courts judicial department.

(Ord. No. 95-81, § 1, 1-25-95; Ord. No. 06-533, § 2, 5-31-06)

Sec. 45-383. Parking citations.

(a) The administrative adjudication process for parking or stopping of vehicle violations that are subject to adjudication under this article shall be initiated by the issuance of a parking citation. A

citation may be issued by a peace officer or other authorized parking enforcement agent designated by or upon authority of the city.

(b) If the owner or operator of the vehicle is not present at the time of issuance of the citation, the citation may be issued by affixing the citation to the vehicle in a conspicuous place.

(c) The citation shall provide that the person charged with a parking, stopping or standing offense shall have the right of an instant hearing to determine the issue of liability for the charged offense. Such right to a hearing shall be exercised by appearing in person before an adjudicative hearing officer within 45 days from the date of issuance of the citation at such convenient and reasonable hours as may be specified by the adjudicative hearing officer, which hours shall be printed on the parking citation. In lieu of an instant hearing the person charged may appear in person or through legal counsel before an adjudicative hearing officer within 45 days from the date of issuance of the citation, post a cash bond for fines, costs and fees in an amount to be established by the adjudicative hearing officer and shall then be scheduled for a hearing before the adjudicative hearing officer at a date and time certain within 30 days of such appearance.

(d) The original or any copy of the citation is a record kept in the ordinary course of business in the city and is rebuttable proof of the facts it contains.

(Ord. No. 95-81, § 1, 1-25-95; Ord. No. 95-186, § 4, 2-22-95; Ord. No. 06-533, § 2, 5-31-06)

Sec. 45-384. Presumption of ownership.

(a) It is presumed that the registered owner of the motor vehicle that is the subject of the administrative hearing is the person who parked or stopped the vehicle at the time and place of the offense charged.

(b) A state department of transportation computer-generated record of the registered vehicle is a prima facie evidence of its contents in an administrative adjudication hearing under this article.

(Ord. No. 95-81, § 1, 1-25-95; Ord. No. 06-533, § 2, 5-31-06)

Sec. 45-385. Hearings.

(a) At the hearing before the adjudicative hearing officer, the person charged may either admit, admit with explanation, or deny the alleged infraction.

(b) The issuing peace officer or other authorized parking enforcement agent shall not be required to attend the hearing.

(c) It is not required that the prosecuting attorney attend the hearing. Provided, however, that if the person charged is represented by legal counsel at the hearing, the adjudicative hearing officer shall notify the prosecuting attorney who shall have a right to appear on behalf of the city at said hearing.

(d) No formal or sworn complaint shall be necessary. The adjudicative hearing officer shall examine the contents of the citation and the evidence related to ownership of the vehicle in question, and shall hear and review the testimony and evidence presented by the person charged. If the adjudicative hearing officer determines by the preponderance of the evidence that the violation was committed by the person charged, he shall find the person charged liable therefor.

(e) At the conclusion of the hearing, the adjudicative hearing officer shall issue an order stating whether or not the person charged is liable for violation of the parking or stopping ordinance and the amount of any fine, costs, or fees assessed against him. The order and all other records of the proceeding shall be filed with the clerk of the municipal court. All such orders shall be kept in a separate index or file by the clerk of the municipal court. The filing of the order and other records of the proceeding shall be kept in accordance with Section 682.009 of the Texas Transportation Code

(f) Failure of a person charged with the offense to appear before an adjudicative hearing officer within 45 days from the issuance of the citation shall be considered an admission of liability for the charged offense and an order shall be issued on that basis. In the event that the person charged elects to appear by posting a bond and obtaining a scheduled hearing at a date and time certain, the failure of the person charged to appear in person

or through counsel at the hearing as scheduled shall also be considered an admission of liability and an order may be issued on that basis.

(g) Fines for violations shall be as provided in section 45-22 of this Code. The presiding judge shall establish fines for persons who do not wish to contest their citations and for persons who admit liability under subsection (f), above. The presiding judge shall establish the amount of any added fine that shall be payable if a citation or fine ordered by an adjudicative hearing officer is not fully satisfied or a bond is not posted within 45 days from the date of issuance of the citation.

(h) Court costs shall be payable on all citations in the amounts required by law including, but not limited to, the fees payable under section 16-8 of this Code. The court costs shall be disposed of as provided in section 16-8, or as otherwise provided by law. All other fines and fees shall be deposited in the city treasury as general revenues of the city.

(i) The clerk of the municipal courts shall cause a video or audio tape record to be made of each hearing and shall retain the tape and any documents introduced at the hearing until the time for an appeal to be filed has expired. (Ord. No. 95-81, § 1, 1-25-95; Ord. No. 06-533, § 2, 5-31-06)

Sec. 45-386. Appeal.

(a) A person determined by the adjudicative hearing officer to be in violation of a parking or stopping ordinance may appeal the determination to the municipal court.

(b) The appeal must be instituted by filing, not later than the thirtieth day after the filing of the adjudicative hearing officer's order, a petition with the clerk of the municipal court along with payment of a nonrefundable administrative appeal fee in the amount of \$10.00 for the first citation and \$5.00 for each additional citation that is appealed, as well as payment of any other costs required by law.

(c) After filing a petition for appeal, the clerk of the municipal court shall schedule a hearing and notify all parties of the date, time and place of the hearing.

(d) The appeal shall be decided under the substantial evidence rule and on the basis of the evidence adduced at the hearing before the adjudicative hearing officer. The record shall be provided to the court by the clerk of the municipal courts. If the municipal court finds the record to be materially incomplete, the municipal court may upon its own motion or upon motion of the defendant or the prosecuting attorney refer the case back to the adjudicative hearing officer for further proceedings; however, no evidence may be adduced at the appeal hearing. The court shall not reverse the adjudicative hearing officer's decision unless it is determined to be (i) in violation of law, (ii) not reasonably supported by substantial evidence, based upon a review of the reliable and probative evidence in the record as a whole, or (iii) arbitrary and capricious or characterized by an abuse of discretion.

(e) Service of notice of appeal under this section does not stay the enforcement and collection of the adjudicative hearing officer's order unless the person who files the appeal also posts a cash appeal bond with the clerk of the municipal court. The appeal bond shall be in the amount of all fines, costs and fees assessed by the adjudicative hearing officer.

(Ord. No. 95-81, § 1, 1-25-95; Ord. No. 06-533, § 2, 5-31-06)

Sec. 45-387. Enforcement.

In addition to the added fine amount for delayed payment as provided in section 45-385(g) of this Code, the failure to comply with an order issued under this article may be enforced in any of the other manners provided in Section 682.010 of the Texas Transportation Code.

(Ord. No. 95-81, § 1, 1-25-95; Ord. No. 06-533, § 2, 5-31-06)

Secs. 45-388—45-400. Reserved.

ARTICLE XVII. RESIDENTIAL PARKING PERMITS

DIVISION 1. GENERALLY

Sec. 45-401. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Commuter vehicle means a motor vehicle, other than a "resident vehicle" as defined herein, that is parked in a residential area in which it is not registered with the Texas Department of Transportation.

Curbside parking space means 20 linear feet of curb, excluding those portions of the curb where the parking of any motor vehicle is not permitted.

Permit means a current and valid permit issued under division 3 of this article.

Resident means the owner or tenant of residential property in a residential area or the tenant of an apartment complex with not more than 16 units in a residential area.

Resident vehicle means a motor vehicle parked in a residential area in which it is registered with the Texas Department of Transportation.

Residential means pertaining to the use of land for premises such as single-family homes, duplexes, condominiums and apartment complexes with eight or fewer units, that contain habitable rooms for nontransient occupancy and are designed primarily for living, sleeping, cooking and eating therein. A premises that is designed primarily for living, sleeping, cooking and eating therein will be deemed to be residential in character unless it is actually occupied and used exclusively for other purposes. Hotels, suites hotels, motels, apartment complexes with nine or more units, boardinghouses and day care centers shall not be considered to be residential.

Residential area means a contiguous area containing or bounded by public streets or parts thereof abutted by residential property occupying at least 75 percent of the front footage along the

blockface, exclusive of vacant property that is not restricted by deed, covenant, plat or otherwise to residential use. A residential area may be one or more blockfaces within a larger residential area, provided that the director can consider a street of 750 feet in length or greater to be two blockfaces of approximately equal length for purposes of this article if requested by the applicants.

Residential parking permit area means an area designated pursuant to division 2 of this article. (Ord. No. 01-759, § 2, 8-15-01; Ord. No. 05-1160, § 2, 10-19-05; Ord. No. 06-533, § 3, 5-31-06; Ord. No. 06-759, § 1, 7-5-06)

Sec. 45-402. Compliance with other laws.

A parking permit issued pursuant to this article does not excuse compliance with any other provisions of state law or this Code relating to parking, including, but not limited to, parking meter payment, "no parking" signs and restricted parking for persons with disabilities. (Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

Sec. 45-403. Offenses.

(a) It shall be unlawful for any person to park a motor vehicle that does not display a permit in a curbside parking space on any day or during any hours for which commuter vehicle parking is prohibited by official signs posted in a residential parking permit area.

(b) It shall be unlawful for any person to represent in any fashion that a motor vehicle is entitled to a permit authorized by this article when it is not so entitled. The display of a permit on a motor vehicle not entitled to the parking permit shall constitute such a representation.

(c) It shall be unlawful for any person to duplicate, or attempt to duplicate, by any means, a permit authorized by this article. It also shall be a violation of this article for any person to display on any motor vehicle a duplicate permit. (Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

Sec. 45-404. Revocation of permit.

In addition to the penalties provided for violation of this article, the parking official shall revoke the residential parking permit and any associated visitor permit of any person found to have committed three or more violations of this article within any one year period. Upon a determination by the parking official that a person who holds a permit has been adjudicated to have committed the number of violations set forth in the preceding sentence within the prescribed period, the parking official shall provide written notification to such person by certified mail, return receipt requested, revoking the permit and ordering the surrender of any visitor permits held under the permit to the parking official. Failure to surrender a revoked visitor permit when requested to do so shall constitute a separate violation of this article, and a signed return receipt shall be prima facie evidence of the delivery of the notice to surrender such permit. (Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

Sec. 45-405. Defenses.

It shall be an affirmative defense to civil prosecution for violation of this article that the motor vehicle parked in a residential parking permit area was:

- (1) A motor vehicle owned by or operated under contract to a utility and in actual use in the construction, operation, removal or repair of utility property or facilities or engaged in authorized work in the designated residential parking permit area;
- (2) A motor vehicle that was clearly identified as owned by or operated under contract to a federal, state, or local governmental agency, was being used in the course of official government business, and was not parked while the operator was working at his customary office or job site;
- (3) An authorized emergency vehicle; or
- (4) A motor vehicle used for delivery or service business purposes, including but not

limited to motor vehicles such as moving vans and sanitation, repair, electrical and plumbing service motor vehicles, that was parked in a residential parking permit area while conducting business at a residence in the residential parking permit area.

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

Sec. 45-406. Cumulative effect.

This article is cumulative of other requirements imposed by ordinances and regulations of the city. To the extent of any inconsistency, the more restrictive provision shall govern. The authority granted by this article is cumulative of the powers granted by this chapter and does not limit the authority of the traffic engineer or other officers authorized to regulate traffic.

(Ord. No. 06-533, § 3, 5-31-06)

Sec. 45-407. Adjudication.

Cases involving violations of the parking provisions of this article shall be adjudicated before adjudicative hearing officers of the municipal courts judicial department.

(Ord. No. 06-533, § 3, 5-31-06)

Secs. 45-408—45-410. Reserved.

**DIVISION 2. DESIGNATION OF
RESIDENTIAL PARKING PERMIT AREAS**

Sec. 45-411. Designation.

(a) The city council may designate residential areas within the city with chronic commuter parking problems as residential parking permit areas pursuant to the procedures of this division. For purposes of this division, a 'chronic commuter parking problem' means the occupancy of curbside parking spaces by commuter vehicles at the same hours and on the same days, but shall not mean parking for events which by their nature are expected to occur on a frequency of less than once every two weeks.

(b) In carrying the functions assigned by this division, the parking official shall consult with and obtain the concurrence of the traffic engineer. (Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

Sec. 45-412. Request for designation.

(a) A request for designation of a residential parking permit area shall be initiated by petition of residents within the proposed residential parking permit area. The minimum residential area for which a petition for designation may be submitted is one blockface, including both sides of the street if both sides are residential or one residential blockface if the opposing blockface is not residential. The request shall be filed with the parking official upon a form promulgated for that purpose by the parking official, and shall include, at a minimum, the following:

- (1) A description of the residential area proposed to be included in the residential parking permit area;
- (2) A description of the chronic parking problem or condition to be remedied;
- (3) Evidence of neighborhood support for the project;
- (4) The name, address and telephone number of a resident in the proposed residential parking permit area who shall be the contact for the request;
- (5) The names and addresses of all residents within the proposed residential parking permit area;
- (6) Any other information reasonably required by the parking official to make any determination required under this article.

The parking official shall immediately forward a copy of all information relating to the request to the traffic engineer.

(b) The parking official initially shall review each request for completeness. If the parking official determines that the request is complete, the request shall be acted upon as further provided in this article. If the parking official deter-

mines that the request is incomplete, he shall return the request with written notice of the deficiencies.

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

Sec. 45-413. Parking survey.

Upon receipt of a complete application for designation of a residential parking permit area, the parking official shall conduct or cause to be conducted a parking survey of the proposed residential parking permit area. The parking survey shall be conducted in the manner prescribed by the traffic engineer. The parking survey shall determine the following information, as well as any other information that the parking official or the traffic engineer determines will be useful to verify the chronic commuter parking problem identified in the application:

- (1) The total number of legal curbside parking spaces in the proposed residential parking permit area;
- (2) The number of legal curbside parking spaces that are occupied by motor vehicles;
- (3) The number of curbside parking spaces that are occupied by commuter vehicles; and
- (4) The general hours of occupancy of curbside parking spaces by commuter vehicles.

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 2, 5-31-06)

Sec. 45-414. Criteria for designation.

The parking official, in making a determination of approval or disapproval with respect to designation, and the city council, in making a designation, shall consider the results of the parking survey and the following criteria:

- (1) The extent to which curbside parking spaces are occupied by motor vehicles. The total number of curbside parking spaces occupied by motor vehicles at the minimum must exceed 60 percent of the number of curbside parking spaces on the

public streets of the proposed residential parking permit area for the area to be eligible for designation;

- (2) The extent to which motor vehicles parking in the area are commuter vehicles. The total number of curbside parking spaces occupied by commuter vehicles during any one-hour period must equal or exceed 25 percent of the total number of curbside parking spaces occupied by motor vehicles in the proposed residential parking permit area for the area to be eligible for designation;
- (3) The extent to which residents cannot obtain adequate curbside parking adjacent to or near their residences because of widespread use of available curbside parking spaces by commuter vehicles;
- (4) The time or times of day of greatest commuter parking in the period surveyed;
- (5) The effect on the safety of the residents from intensive commuter vehicle parking;
- (6) The existence of air and noise pollution, hazardous conditions, and deterioration of the residential environment as a result of traffic congestion and insufficient parking in the area;
- (7) The extent and availability to the general public of parking in the residential district;
- (8) The extent that the designation of a residential parking permit area would be likely to reduce traffic congestion and any other problems identified in this section;
- (9) Evidence of support of the residents in the proposed residential parking permit area for the institution of a residential parking permit system and the willingness of those residents to bear the costs incidental to the issuance of parking permits authorized by this article;
- (10) Whether the problems identified in this section can reasonably and feasibly be solved at no additional cost to the city through an alternative to the designation of a residential parking permit area; and

- (11) Any other traffic issue identified by the traffic engineer.

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

Sec. 45-415. Parking regulations.

If the parking official determines that an application for designation meets the criteria for designation, he shall so notify the traffic engineer, who shall develop for the proposed residential parking permit area proposed parking regulations that shall establish the days of the week and the times of day that parking by commuter vehicles shall be prohibited in the residential parking permit area. Nothing in this article shall require the traffic engineer to develop any parking regulations for a proposed residential parking permit area for days and times the traffic engineer determines parking would interfere with traffic mobility. The parking official may include his recommendations regarding the residential parking permit area in the notification to the traffic engineer. Parking regulations developed for residential parking permit areas for which an application is submitted after or was pending on October 19, 2005, shall not prohibit commuter vehicle parking along the portion of the blockface on which a nonresidential property faces.

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 05-1160, § 3, 10-19-05; Ord. No. 06-533, § 3, 5-31-06; Ord. No. 06-759, § 2, 7-5-06)

Sec. 45-416. Public hearing.

(a) After determining that an application for designation meets the criteria for designation and developing the proposed regulations for the residential parking permit area, the parking official shall conduct a public hearing to receive comment on the designation of the proposed residential parking permit area and the proposed parking regulations.

(b) The parking official shall give written notice of the public hearing by mail no less than 15 days before the date of the public hearing as follows:

- (1) Addressed to "Occupant," of each property within, and within 200 feet of, the boundaries of the proposed residential parking permit area;

- (2) To the owner of each property located within or within 200 feet of the boundaries of the proposed residential parking permit area as shown on the most recently approved tax rolls for the county in which the proposed area is located; and

- (3) To each registered civic association and recognized super neighborhood in whose area the proposed residential parking permit area is located, provided that notice may be given electronically if that is the customary format with which the department communicates with the civic association or super neighborhood.

- (4) For purposes of this subsection 45-416(b), the "boundaries of the proposed residential parking permit area" shall be the rear property line, and the side property line of a corner property, of each lot or tract that abuts a blockface included in the residential parking permit area.

(c) Notice in the form prescribed by the parking official shall be published once in a newspaper of general circulation in the city at least 10 days prior to the hearing and shall be given in electronic format to the district council member in which the proposed residential parking permit area is located.

(d) The notice shall clearly state the purpose, date, time and location of the public hearing; the location and boundaries of the proposed residential parking permit area; the regulations proposed for the area; and the parking permit fees that will be charged.

(e) Written notice that is given by mail shall be deemed given when it is deposited in the United States mail, properly addressed, postage paid. The affidavit of a person who has knowledge of the fact that notice was mailed is prima facie evidence that notice has been given as required by this section.

(f) At the public hearing, any interested person, including the traffic engineer, may present testimony, orally or in writing, with respect to the proposed residential parking permit area, the

proposed regulations and the permit fees. The parking official may establish rules for the conduct of the public hearing.

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 05-1160, § 4, 10-19-05; Ord. No. 06-533, § 3, 5-31-06; Ord. No. 06-759, § 2, 7-5-06)

Sec. 45-417. Parking official action.

Following the close of the public hearing, the parking official shall approve or disapprove the proposed residential parking permit area or modify the proposal in response to public comment. If the parking official approves the proposal, with or without modification, he shall recommend the application and the parking regulations developed by the traffic engineer to the city council for designation of the residential parking permit area. If the parking official does not approve the proposal, he shall so advise the applicant, and the application shall not be submitted to the city council.

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

Sec. 45-418. City council action.

City council designation of a residential parking permit area shall be by motion. Designation of a residential parking permit area shall be effective 60 days after passage of the motion designating the district.

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

Sec. 45-419. Notice to residents.

As soon as practicable following the designation of a residential parking permit area, the parking official shall mail to the occupant of every address within the designated residential parking permit area a written notice that shall contain the following information:

- (1) The existence, boundaries and numerical designation of the residential parking permit area;
- (2) The parking restrictions applicable to all motor vehicles in curbside parking spaces along public streets in the designated area that do not properly display a permit authorized by this article;

- (3) The effective date of the regulations;
- (4) The procedures and associated fees to obtain a residential or visitor permit; and
- (5) An application for a residential permit on the form to be prescribed by the parking official.

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

Secs. 45-420—45-429. Reserved.

DIVISION 3. PERMITS

Sec. 45-430. Residential permits.

(a) Upon submission of a complete residential permit application to the parking official by a resident of a residential parking permit area, and payment of the fee prescribed in this article, an applicant shall be entitled to receive one residential permit for each motor vehicle described in the application in accordance with the schedule set forth in section 45-433.

(b) A residential permit shall be valid for one year from its date of issuance and may be renewed for as long as the motor vehicle qualifies for a residential permit; provided, that no permit that has been revoked pursuant to section 45-404 of this Code shall be reissued for a period of two years from the date of such revocation.

(c) No residential permit shall be issued for a motor vehicle whose owner or principal operator does not reside within the designated residential parking permit area.

(d) A residential permit issued for a motor vehicle that no longer qualifies for a residential permit is void.

(e) An applicant may obtain a replacement residential permit in the same manner and for the same fee as the original residential permit upon providing evidence satisfactory to the parking official that the original permit has been destroyed.

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

Sec. 45-431. Visitor permits.

Upon application of any resident of a residential parking permit area, the parking official shall issue to the resident no more than the number of visitor permits determined from the schedule in section 45-433 that will allow motor vehicles displaying the visitor permit to park in curbside spaces in the residential parking permit area except where or at times otherwise prohibited. Each visitor permit shall be valid for one year from the date of issuance. For purposes of this article, the resident shall be the holder of and responsible for the use of any visitor permit issued to the resident.

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

Sec. 45-432. Permit fees.

The schedule of fees established pursuant to section 45-433 shall be applicable initially to the permits authorized to be issued pursuant to this article. The parking official shall determine annually in connection with the city's fiscal year whether an increase or decrease in these fees is required for the continued operation of the residential parking permit program and are hereby authorized to make adjustments annually to the schedule of fees. The parking official shall not issue any permit unless and until the applicable fee has been paid.

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

Sec. 45-433. Schedule of permits and fees.

Number of Motor Vehicles Registered				
	0	1	2	2+
Residential Permits Allowed Per Residential Unit				
Number	0	1	2	2+
Cost of each permit	NA	\$20.00	\$20.00	\$20.00
Visitor Permits Allowed Per Residential Unit				
Number	4	3	2	2
Cost of first permit	\$20.00	\$20.00	\$2.00	\$2.00
Cost of second permit	\$20.00	\$2.00	\$2.00	\$2.00
Cost of each additional permit	\$2.00	\$2.00	NA	NA

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

Sec. 45-434. Display of permits.

(a) Each residential permit shall be permanently adhered to the inside bottom driver side corner of the rear window of the motor vehicle. A permit that is not permanently adhered shall not be a valid permit.

(b) All visitor permits shall be displayed inside the motor vehicle hanging from the rear view mirror so that the permit is easily visible from outside the motor vehicle.

(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

Sec. 45-435. Effect of issuance of permit.

(a) A residential or visitor permit shall not guarantee or reserve a curbside parking space within a residential parking permit area. A permit issued pursuant to this article shall not authorize the standing or parking of any motor vehicle in any place or during any time when the stopping, standing or parking of motor vehicles is prohibited or set aside for specified motor vehicle types. The issuance of a permit shall not excuse the observance of any traffic regulation.

(b) Whenever the holder of a permit, or the motor vehicle for which a residential permit was issued, no longer fulfills one or more of the applicable provisions of this article controlling issuance or renewal of permits, the holder shall notify the parking official, who shall direct the holder to surrender the permit or present evidence that the permit has been removed from the motor vehicle.

(c) Until its expiration, surrender or revocation, a permit shall remain valid for the length of time the holder continues to reside within the designated residential parking permit area.

(d) A permit shall be valid only in the residential parking permit area for which it is issued.
(Ord. No. 01-759, § 2, 8-15-01; Ord. No. 06-533, § 3, 5-31-06)

Secs. 45-436—45-450. Reserved.

ARTICLE XVIII. CERTAIN TRAFFIC CONTROL DUTIES

DIVISION 1. GENERAL

Sec. 45-451. Definitions.

As used in this article, the following words and terms shall have the meanings ascribed to them in this section:

Off-duty, with respect to a peace officer, means any time other than while the officer is on-duty, as defined herein.

On-duty, with respect to a peace officer, means while performing functions or activities during work hours assigned by the jurisdiction through which the officer holds his commission and for which the officer receives wages that are paid by that jurisdiction.

Peace officer shall mean a person holding a permanent peace officer license issued under chapter 1701, Texas Occupations Code.

Police chief means the Chief of the Houston Police Department.

Traffic control permit means a current and valid permit issued by the police chief pursuant to division 2 of this article to conduct traffic direction.

Traffic direction means any activity by which a peace officer directs vehicular or pedestrian traffic upon a street or upon other property situated in such proximity to a street that the activity affects the flow of vehicular or pedestrian traffic upon a street for the purpose of facilitating ingress or egress to a street in the city from another street, a private street, parking lot, parking garage or other private property. The activity includes, but is not limited to control of traffic by hand signals, whistle or verbal directions, or the assumption of control of the functions of an otherwise automated traffic signal light or control device. The term shall not include the direction of traffic in connection with any construction occurring

within or upon a street by personnel employed for that purpose, as authorized by chapter 472, Texas Transportation Code.

(Ord. No. 04-798, § 2, 7-28-04)

Sec. 45-452. Prohibited conduct; defenses.

(a) During the hours between 6:00 a.m. and 7:00 p.m. on any Monday, Tuesday, Wednesday, Thursday, or Friday, other than a holiday observed by the closure of city offices, it shall be unlawful within the city:

- (1) For any person other than a peace officer to conduct or engage in traffic direction; or
- (2) For any off-duty peace officer to conduct or engage in traffic direction unless a traffic control permit for that activity has been issued pursuant to this article; or
- (3) For any person to hire, employ or otherwise cause, suffer or permit any person to conduct or engage in traffic direction for or on behalf of such person, unless a traffic control permit has been issued pursuant to this article; or
- (4) For any person to conduct or engage in, or hire, employ or otherwise cause, suffer or permit another to conduct or engage in, traffic direction in violation of the terms of a traffic control permit.

(b) It is an affirmative defense to prosecution under this section that:

- (1) The actor is an on-duty peace officer of a jurisdiction other than the city and is conducting or engaging in traffic direction within the legally authorized territory of that jurisdiction;
- (2) The actor is a peace officer of the city or another jurisdiction of this state and conducts or engages in traffic direction in an emergency situation, provided that the actor does not receive any additional compensation for conducting or engaging in the traffic direction; or
- (3) The actor is a school crossing guard acting pursuant to chapter 541 of the Texas Transportation Code and is conducting or

engaging in traffic direction for the protection of children going to or leaving school within a school crossing zone.

- (4) The actor is otherwise expressly authorized by law to conduct or engage in traffic direction.

(Ord. No. 04-798, § 2, 7-28-04)

Sec. 45-453. Rules; forms; fees.

(a) The police chief, in consultation with the director of public works and engineering or his designee, may issue rules and regulations for the operation of this article and shall promulgate application and permit forms, which shall be approved by the city attorney prior to use.

(b) The initial fee for the issuance of a traffic control permit shall be \$100.00. The fee shall be reviewed and approved by the director of finance and administration on an annual basis and adjusted to fully recover the city's costs, taking into account permit issuance and renewal costs, inspection and oversight services that may be required, and equipment and resource utilization, provided that no fee increase in excess of 15 percent shall be implemented without prior approval of the city council.

(c) The director of public works and engineering or his designee may also establish a fee for traffic engineer reviews required under this article, which fees shall be reviewed and adjusted on an annual basis in the manner established in the preceding subsection.

(d) Applicants must represent that only off-duty peace officers with appropriate training will perform traffic direction under the permit.

(Ord. No. 04-798, § 2, 7-28-04)

Sec. 45-454. Disposition of fees.

All fees generated under this article, except those for traffic engineering reviews, shall be allocated to the police special services fund administered by the police department.

(Ord. No. 04-798, § 2, 7-28-04)

Sec. 45-455. Hearings.

Any person who is aggrieved by the action of the police chief in failing to approve an applica-

tion or in terminating a traffic control permit under this article shall be entitled to a hearing on the matter. The hearing shall be conducted by a hearing officer designated for that purpose by the police chief and shall be conducted informally but in a manner consistent with principles of due process. The hearing officer's decision on the matter shall be final.

Secs. 45-456—45-460. Reserved.

DIVISION 2. TRAFFIC CONTROL PERMITS

Sec. 45-461. Application for traffic control permit.

Any person who desires a traffic control permit may make application for the permit to the police department upon forms promulgated for that purpose as provided in section 45-453.

(Ord. No. 04-798, § 2, 7-28-04)

Sec. 45-462. Traffic engineering review.

All applications for a traffic control permit shall be reviewed by the traffic engineer. The rules established pursuant to section 45-453 of this Code for the consideration of applications for traffic control permits shall ensure that the provision of traffic direction requested by an applicant is consistent with sound principles of traffic engineering and public mobility. Consistent with those criteria, the traffic engineer may require that certain applications also include the traffic engineer's approval of a traffic engineering study to be provided by the applicant and prepared by a professional engineer acceptable to the traffic engineer.

(Ord. No. 04-798, § 2, 7-28-04)

Sec. 45-463. Action on application.

Following receipt of a complete application and any required fee, the police department shall cause the application to be reviewed for compliance with this article and any applicable rules, including review by the traffic engineer. The police department shall notify the applicant

whether the application has been approved or denied. If it is denied, then the grounds for denial shall be articulated in the notice.

(Ord. No. 04-798, § 2, 7-28-04)

Sec. 45-464. Issuance of permit.

(a) Traffic control permits shall be issued on the basis of standard forms that are promulgated under section 45-453 of this Code.

(b) Without limitation of any other requirements, the permit form shall provide that no traffic direction shall be implemented until the permit holder has prepaid the city for all applicable fees.

(c) Traffic control permits shall contain a provision that allows the police chief or his designee to terminate a permit for failure of the permit holder to comply with any applicable term of the permit upon ten days' prior written notice.

(Ord. No. 04-798, § 2, 7-28-04)

Sec. 45-465. Services under permit.

(a) Services under traffic control permits shall be limited to traffic direction at the times and places described in the permit. Off-duty peace officers operating under a permit issued under this article shall at all times remain subject to the full supervision and control of the police chief or his designee but shall not function in any manner as employees or agents of the department or the city.

(b) All traffic control permits are subject to the continuing supervision of the police department to ensure public safety and efficient mobility on the streets and highways of the city. The police chief or his designee may suspend all services under a traffic control permit at any time if in the opinion of the police chief such action is required to ensure the safe and efficient movement of traffic on the streets and highways of the city. A determination by the police chief to suspend a traffic control permit shall be final.

(Ord. No. 04-798, § 2, 7-28-04)

Secs. 45-466—45-480. Reserved.

ARTICLE XIX. PHOTOGRAPHIC TRAFFIC MONITORING SYSTEM

Sec. 45-481. Definitions.

As used in this article, the following words and terms shall have the meanings ascribed in this section, unless the context of their usage clearly indicates another meaning:

Intersection means the place or area where two or more streets intersect.

Owner means the owner of a motor vehicle as shown on the motor vehicle registration records of the Texas Department of Transportation or the analogous department or agency of another state or country.

Photographic traffic monitoring system means a system that:

- (1) Consists of a camera system installed to work in conjunction with an electrically operated traffic control signal; and
- (2) Is capable of producing a recorded image that depicts the license plate of a motor vehicle that is not operated in compliance with the instructions of the traffic control signal.

Recorded image means an image recorded by a photographic traffic monitoring system that depicts a license plate of a motor vehicle and is automatically recorded on a photograph or digital image.

System location means an intersection toward which a photographic traffic monitoring system is directed and in operation.

Traffic control signal means a traffic control device that displays alternating red, yellow, and green lights that direct traffic when to stop at or proceed through an intersection.

(Ord. No. 04-1312, § 2, 12-21-04)

Sec. 45-482. Imposition of civil penalty for creating dangerous intersections.

(a) Except as provided in subsection (b) of this section, the owner of a motor vehicle is liable for a civil penalty of \$75.00 if the motor vehicle proceeds into a system location without turning

when the traffic control signal for that motor vehicle's direction of travel is emitting a steady red signal.

(b) For a third or subsequent violation of this article committed by the owner of the same motor vehicle during any 12-month period, the amount of the civil penalty shall be \$150.00.

(c) An owner who fails to timely pay the civil penalty shall be subject to a late payment penalty of \$25.00.

(Ord. No. 04-1312, § 2, 12-21-04)

Sec. 45-483. Enforcement; procedures.

(a) The police department, municipal courts judicial department, and the municipal courts administration department shall be responsible for the enforcement and administration of this article. The police chief, the presiding judge of the municipal courts, and the chief clerk of the municipal courts shall establish and implement appropriate procedures to effect the policy of this article.

(b) To impose a civil penalty under this article, the municipal courts administration department shall mail or cause to be mailed a notice of violation to the owner of the motor vehicle liable for the civil penalty not later than 90 days after the date the violation is alleged to have occurred to:

- (1) The owner's address as shown on the registration records of the Texas Department of Transportation; or
- (2) If the vehicle is registered in another state or country, the owner's address as shown on the motor vehicle registration records of the department or agency of the other state or country analogous to the Texas Department of Transportation.

(c) A notice of violation issued under this article shall contain the following:

- (1) A description of the violation alleged;
- (2) The date, time, and location of the violation;
- (3) The name and address of the owner of the vehicle involved in the violation;

- (4) The license plate number of the vehicle involved in the violation;
- (5) A copy of a recorded image of a license plate of the vehicle involved in the violation;
- (6) The amount of the civil penalty to be imposed for the violation;
- (7) A statement that the person named in the notice of violation may pay the civil penalty in lieu of appearing at an administrative adjudication hearing;
- (8) The date by which the civil penalty must be paid;
- (9) Information that informs the person named in the notice of violation:
 - a. Of the right to contest the imposition of the civil penalty in an instanter administrative adjudication hearing;
 - b. Of the manner and place to contest the civil penalty;
 - c. That in lieu of an instanter hearing, the person charged may appear in person or through legal counsel before an adjudicative hearing officer within 45 days after receipt of the notice of the violation, post a cash bond for fines, costs and fees in an amount established by the adjudicative hearing officer and shall then be scheduled for a hearing before the adjudicative hearing officer at a date and time certain within 30 days of such appearance;
 - d. That failure to appear in person or through legal counsel before an adjudicative hearing officer within 45 days after receipt of the notice of violation at such convenient and reasonable hours as may be specified by the adjudicative hearing officer is an admission of liability and constitutes a waiver of the right to appeal under section 45-487 of this Code; and

- e. That failure to pay the civil penalty within the time allowed shall result in the imposition of a late-payment fee of \$25; and
- (10) A statement that, if at the time and place of the violation the vehicle was being operated by a person other than the owner, then the owner may transfer liability for the violation to the person who was operating the vehicle at that time and place if the owner submits to the city by affidavit, on a form approved by the chief of police, or under oath at an administrative adjudication hearing, the name and current address of the person:
- a. Who was operating the vehicle at the time and place of the violation;
 - b. Who was the lessee of the vehicle at the time of the violation, if the vehicle was rented or leased from a person in the business of renting or leasing motor vehicles at that time; or
 - c. Who was the subsequent owner of the motor vehicle, if ownership of the vehicle was transferred by the owner before the time of the violation.
- (d) A notice of violation under this article is presumed to have been received on the tenth day after the date the notice of violation was mailed.
- (e) A person who receives a notice of violation of this article may pay the civil penalty in lieu of appearing at an administrative hearing within 45 days after receipt of the notice of violation.
- (f) In lieu of issuing a notice of violation of this article, the police department may mail a warning notice to the owner.
(Ord. No. 04-1312, § 2, 12-21-04; Ord. No. 06-566, §§ 1-3, 5-31-06)
- Sec. 45-484. Administrative adjudication hearing.**
- (a) An administrative adjudication hearing shall be held before an adjudicative hearing officer.
 - (b) A person who receives a notice of violation of this article may contest the imposition of the civil penalty by appearing at an instanter administrative adjudication hearing. Such a right to a hearing shall be exercised by appearing before an adjudicative hearing officer within 45 days after receipt of the notice of violation at such convenient and reasonable hours as may be specified by the adjudicative hearing officer. In lieu of an instanter hearing, the person charged may appear in person or through legal counsel before an adjudicative hearing officer within 45 days from the date of issuance of the citation, post a cash bond for fines, costs and fees in an amount established by the adjudicative hearing officer and shall then be scheduled for a hearing before the adjudicative hearing officer at a date and time certain within 30 days of such appearance.
 - (c) In an administrative adjudication hearing, the issues must be proved by a preponderance of the evidence. The reliability of the photographic traffic monitoring system used to produce the recorded image of the violation may be attested to in a hearing by affidavit of an officer or employee of the city or the entity with which the city contracts to install or operate the system and who is responsible for inspecting and maintaining the system. Such an affidavit is admissible in a proceeding under this article, is evidence of the facts contained in the affidavit, and is prima facie evidence of the violation alleged in the notice of violation.
 - (d) The city attorney or his designee is not required to attend the administrative adjudication hearing. However, if the person charged is represented by legal counsel at the hearing, the adjudicative hearing officer shall notify the city attorney or his designee who shall have a right to appear on behalf of the city at said hearing.
 - (e) Failure to pay a civil penalty or to contest liability in a timely manner is an admission of liability in the full amount of the civil penalty assessed in the notice of violation and constitutes a waiver of the right to appeal under section 45-487 of this Code.
 - (f) Failure to appear at an administrative adjudication hearing after having requested a hearing is an admission of liability for the full amount

of the civil penalty assessed in the notice of violation and constitutes a waiver of the right to appeal under section 45-487 of this Code.

(g) The civil penalty shall not be assessed if:

- (1) After a hearing, the adjudicative hearing officer enters a finding of no liability; or
- (2) Within 45 days after receipt of the notice of violation, the person against whom the civil penalty is to be assessed submits the written proof described in item 45-483(c)(10) of this Code.

(h) A person who is found liable for a civil penalty after an administrative adjudication hearing shall pay the civil penalty within ten days after the date on which the hearing was held.

(i) Notwithstanding anything in this article to the contrary, a person who fails to pay the amount of a civil penalty or to contest liability in a timely manner is entitled to an administrative adjudication hearing on the violation if:

- (1) The person files an affidavit with the adjudicative hearing officer stating the date on which the person received the notice of violation that was mailed to the person; and
- (2) Within the same period required by subsection 45-484(b) of this Code for a hearing to be timely requested but measured from the date the mailed notice was received as stated in the affidavit filed under item (1) above, the person requests an administrative adjudication hearing.

(j) A video or audio recording of the hearing shall be made of each hearing, and the chief clerk shall retain or cause to be retained the tape and any documents introduced at the hearing until the time for an appeal has expired.

(Ord. No. 04-1312, § 2, 12-21-04; Ord. No. 06-566, § 4, 5-31-06)

Sec. 45-485. Affirmative defenses.

(a) It shall be an affirmative defense to liability under this article, to be proven by a preponderance of the evidence, that:

- (1) The traffic-control signal was not in proper position and sufficiently legible to an ordinarily observant person;

(2) The operator of the motor vehicle was acting in compliance with the lawful order or direction of a police officer;

(3) The operator of the motor vehicle violated the instructions of the traffic-control signal so as to yield the right-of-way to an immediately approaching authorized emergency vehicle;

(4) The motor vehicle was being operated as an authorized emergency vehicle under Chapter 546 of the Texas Transportation Code and the operator was acting in compliance with that chapter;

(5) The motor vehicle was a stolen vehicle and being operated by a person other than the owner of the vehicle without the effective consent of the owner;

(6) The license plate depicted in the recorded image of the violation was a stolen plate being displayed on a motor vehicle other than the motor vehicle for which the plate had been issued;

(7) The vehicle was being operated by a person other than the owner of the vehicle;

(8) The presence of ice, snow, unusual amounts of rain or other unusually hazardous road conditions existed that would make compliance with this article more dangerous under the circumstances than non-compliance; or

(9) The person who received the notice of violation was not the owner of the motor vehicle at the time of the violation.

(b) To demonstrate that at the time of the violation the motor vehicle was a stolen vehicle or the license plate displayed on the motor vehicle was a stolen plate, the owner must submit proof acceptable to the adjudicative hearing officer that the theft of the vehicle or license plate had been timely reported to the appropriate law enforcement agency.

(Ord. No. 04-1312, § 2, 12-21-04; Ord. No. 06-566, § 5, 5-31-06)

Sec. 45-486. Order of the adjudicative hearing officer.

At the conclusion of the hearing, the adjudicative hearing officer shall determine whether or not the person charged is liable for the violation and the amount of any civil penalty and late penalty assessed against the person.

(Ord. No. 04-1312, § 2, 12-21-04; Ord. No. 06-566, § 6, 5-31-06)

Sec. 45-487. Appeal.

(a) A person who is found liable after an administrative adjudication hearing may appeal that finding of liability to the municipal courts by filing a notice of appeal with the chief clerk of the municipal courts. The notice of appeal must be filed not later than 10 days after the date on which the adjudicative hearing officer entered the finding of liability and shall be accompanied by the payment of a nonrefundable appellate filing fee of \$10.00. Unless the person, on or before the date of filing of the notice of appeal, posts a bond in the amount of the civil penalty and any late fees, an appeal does not stay the enforcement of the civil penalty. An appeal shall be decided by the municipal court under the substantial evidence rule and on the basis of the evidence adduced at the hearing before the adjudicative hearing officer. The chief clerk's office shall provide or cause to be provided a copy of the record to the municipal court. If the municipal court finds the record to be materially incomplete, the court may upon its own motion or upon the motion of the defendant or the prosecuting attorney refer the case back to the adjudicative hearing officer for further proceedings; however, no evidence may be adduced at the appeal hearing.

(b) The municipal court shall not reverse the adjudicative hearing officer's decision unless it is determined to be:

- (1) In violation of the law;
- (2) Not reasonably supported by substantial evidence, based upon a review of the reliable and probative evidence in the record as a whole; or

- (3) Arbitrary and capricious or characterized by an abuse of discretion.

(Ord. No. 04-1312, § 2, 12-21-04; Ord. No. 06-566, § 6, 5-31-06)

Sec. 45-488. Effect of liability; exclusion of civil remedy; enforcement.

(a) The imposition of a civil penalty under this chapter is not a conviction and may not be considered a conviction for any purpose.

(b) No civil penalty may be imposed under this article on the owner of a motor vehicle if the operator of the vehicle was arrested or was issued a citation and notice to appear by a peace officer for a violation of Section 544.007(d) of the Texas Transportation Code recorded by the photographic traffic monitoring system.

(c) The city attorney is authorized to file suit to enforce collection of a civil penalty assessed under this article.

(Ord. No. 04-1312, § 2, 12-21-04)

Sec. 45-489. Disposition of fees.

All penalties and fees collected from the imposition of civil liability under this article shall be first expended to defray all costs associated with the operation and enforcement of the photographic traffic monitoring system and any remaining funds shall be deposited in the police special services fund to be expended for public safety programs.

Secs. 45-490—45-500. Reserved.

ARTICLE XX. MINIMOTORBIKES

Sec. 45-501. Definitions.

As used in this article, the following terms shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Alley is defined in section 39-1 of this Code.

Minimotorbike means a self-propelled vehicle that is equipped with an electric motor or internal combustion engine having a piston displacement of less than 50 cubic centimeters,

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is designed to propel itself with not more than two wheels in contact with the ground, has a seat or saddle for the use of the operator, is not designed for use on a highway, and is ineligible for a certificate of title under Chapter 501 of the Transportation Code. The term does not include:

- (1) A golf cart, moped, motorcycle, or tractor;
- (2) An electric bicycle or motor-driven cycle, as defined by Section 541.201 of the Transportation Code;
- (3) A motorized mobility device, as defined by Section 542.009 of the Transportation Code;
- (4) An electric personal assistive mobility device, as defined by Section 551.201 of the Transportation Code; or
- (5) A neighborhood electric vehicle or a motor assisted scooter, as defined by Section 551.301 of the Transportation Code.

Park means any portion of the city's park system, including any park owned by another entity and managed by the city.

Roadway is defined in section 32-222 of this Code.

Sidewalk is defined in section 32-222 of this Code.

Street is defined in section 10-48 (4) of this Code.
(Ord. No. 05-664, § 2, 5-24-05)

Sec. 45-502. Offense involving the operation of minimotorbikes on roadways and parks within the city.

(a) A person commits an offense if the person rides or operates, or as the parent or guardian of a child younger than 18 years of age permits the child to ride or operate, a minimotorbike on any roadway, street, alley, sidewalk or park within the city limits.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than \$500.00.

(Ord. No. 05-664, § 2, 5-24-05)